

# **EXHIBIT 29**

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE DISTRICT OF NEW JERSEY  
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5       IN RE JOHNSON & JOHNSON TALCUM POWDER PRODUCTS  
6       MARKETING, SALES PRACTICES AND PRODUCTS  
7       LIABILITY LITIGATION,

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9                               MDL No. 16-2738-(FLW)(LHG)

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11       \*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*

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13       REMOTE DEPOSITION OF ANNE MCTIERNAN, M.D., Ph.D.

14                               August 19, 2021  
15                               10:39 a.m. to 3:41 p.m.  
16                               REPORTED BY ANITA KORNBURGER  
17                               REGISTERED PROFESSIONAL REPORTER

18       \*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*

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Plaintiffs.

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1 I N D E X

2

3 Examination by Page

4 Ms. Brown. . . . .5

5 E X H I B I T S

6 Page

7 Exhibit No. Description Identified

8 1 Letter from Ms. Parfitt dated

9 August 16, 2020. . . . . 7

10 2 Amended report. . . . . 9

11 3 Amended report with red lines. . . . . 9

12 4 4/1/2014 letter to Sam Epstein. . . . . 43

13 5 Tab 24. . . . . 50

14 6 Invoices. . . . . 65

15 7 Invoices. . . . . 75

16 8 E-mail dated October 28, 2019. . . . . 84

17 9 RJ Lee letters and reports from

18 October 28, 2019. . . . . 109

19 10 Not properly identified. . . . . 122

20 11 Article from Canadian Urological

21 Association. . . . . 125

22 12 Article: Scientists: Facts Fail

23 to Support Some Conclusions in

24 JAMA Article on Talc Use, Ovarian

25 Cancer. . . . . 127

13 O'Brien paper. . . . . 135

14 O'Brien article. . . . . 151

15 Editorial regarding the O'Brien

paper. . . . . 163

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1 E X H I B I T S

2 Page

3 Exhibit No. Description Identified

4 16 Reuters article. . . . . 179

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7

8 R E Q U E S T S

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10 (There were no requests made.)

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Page 5

1 T R A N S C R I P T O F P R O C E E D I N G S

2 ANNE MCTIERNAN, M.D., Ph.D., called as a

3 witness herein, having been first duly sworn on

4 oath, was examined and testified as follows:

5 E X A M I N A T I O N

6 BY MS. BROWN:

7 Q. Good morning, Dr. McTiernan. How are

8 you?

9 A. Fine. Thank you. How are you?

10 Q. Good. It's nice to see you again. A lot

11 has changed since the last time you and I saw each

12 other in person.

13 You -- can you tell us where you are

14 appearing from today?

15 A. I'm appearing from my home in Seattle.

16 Q. Okay. And I understand, understandably

17 given the pandemic, you are not traveling right

18 now; is that right?

19 A. That's correct.

20 Q. Okay. And does that mean that in terms

21 of your work, you are not going into the office, or

22 are you working from home?

23 A. I'm working from home, yes.

24 Q. And has that been the case pretty much

25 entirely since the start of the pandemic?

<p style="text-align: right;">Page 6</p> <p>1 A. Yes. My institution instituted something                  2 very early, and so I've been working from home                  3 since March of a year-and-a-half ago. And my                  4 institution doesn't allow us to travel for work,                  5 and they asked us not to travel for personal                  6 reasons.</p> <p>7 Q. Understood. And would that apply to any                  8 future trial appearances you may have, those                  9 restrictions would apply to those as well?</p> <p>10 MS. PARFITT: Objection.</p> <p>11 THE WITNESS: The --</p> <p>12 MS. PARFITT: You may answer.</p> <p>13 THE WITNESS: Okay. So the question                  14 again was?</p> <p>15 BY MS. BROWN:</p> <p>16 Q. Sure. Yeah. Can you help me understand                  17 a little more what is the policy of your                  18 institution in terms of travel right now?</p> <p>19 A. Right now it says no work for                  20 travel -- sorry -- no travel for work. And they're                  21 asking us not to travel for personal reasons. And                  22 so for that, plus our -- my family's high risk                  23 status, we're choosing not to travel for personal                  24 reasons: no flights, no boats, no trains.</p> <p>25 Q. Sure. I understand. And is there a time</p>	<p style="text-align: right;">Page 8</p> <p>1 have a hard copy binder of all of the documents                  2 that were produced to us.</p> <p>3 And I think what will likely happen,                  4 Dr. McTiernan, through the course of the deposition                  5 is that I'll want to remark individually some of                  6 those documents and ask you specific questions                  7 about them.</p> <p>8 But both you and Michelle should have                  9 a binder titled Documents Produced By Plaintiff in                  10 Advance of Dr. McTiernan's Deposition. And again,                  11 for your record, we'll mark the totality of that as                  12 Exhibit 1. And for the court reporter, we'll                  13 follow up with those documents.</p> <p>14 A. So I don't have any binder that says                  15 that. Oh, wait a minute. Yeah, there's one that                  16 says Documents Produced by Plaintiff. The other                  17 one says Deposition.</p> <p>18 Q. Sure. So the one I'm referring to that                  19 we're marking as Exhibit 1, Doctor, is the one that                  20 says Documents Produced By Plaintiff.</p> <p>21 A. Okay.</p> <p>22 Q. Okay? And then what I'd like to -- in                  23 the second binder you will have -- you will find a                  24 tab one, your amended expert report, and a tab two,                  25 a red line of that amended report to your initial</p>
<p style="text-align: right;">Page 7</p> <p>1 limit on that restriction from your institution or                  2 is that sort of an open-ended policy as of right                  3 now?</p> <p>4 A. The institution is trying to work things                  5 out. They were getting closer to being able to                  6 lift some restrictions, including working at the                  7 office, but with the delta variant, they moved back                  8 again. So we're hopeful that with new vaccines,                  9 boosters coming out, and with time, that things                  10 will get better.</p> <p>11 Q. Understood. Do you have plans to testify                  12 remotely in any upcoming trials?</p> <p>13 A. If needed, I would testify remotely. I                  14 would love to be able to travel to testify if                  15 that's possible. It depends entirely on timing and                  16 on what the COVID situation is.</p> <p>17 Q. Let's -- what I'd like to do,                  18 Dr. McTiernan, is mark as Exhibit 1 to your                  19 deposition a letter that we received from                  20 Ms. Parfitt on August 16, 2020 that included a                  21 number of documents that were produced in response                  22 to our deposition notice.</p> <p>23 And what I'll do, for the record, is                  24 leave that as a place holder exhibit, and we'll                  25 fill it in with all of those documents. You should</p>	<p style="text-align: right;">Page 9</p> <p>1 report in the MDL. And what I'd like to do is mark                  2 the amended report as Exhibit 2 and the red line as                  3 Exhibit 3.</p> <p>4 And let me start by asking you,                  5 Dr. McTiernan, why did you amend your expert report                  6 in this litigation?</p> <p>7 A. I amended it because there was a couple                  8 of new pieces of information that I thought was                  9 useful for this -- these issues. One was to add a                  10 new pooled study that had been published, and                  11 another was to add the final screening report of                  12 Health Canada.</p> <p>13 Q. Was it your idea to amend your report?</p> <p>14 MS. PARFITT: Objection. You may answer,                  15 Dr. McTiernan. Dr. McTiernan, again, throughout                  16 this deposition I may object to form. You may                  17 proceed unless I tell you otherwise with your                  18 responses.</p> <p>19 THE WITNESS: Okay.</p> <p>20 MS. PARFITT: Thank you.</p> <p>21 THE WITNESS: So that was -- I missed the                  22 last thing that --</p> <p>23 BY MS. BROWN:</p> <p>24 Q. No problem. No problem, Doctor. Was it                  25 your idea to amend your expert report?</p>

<p style="text-align: right;">Page 10</p> <p>1 MS. PARFITT: Objection, form.</p> <p>2 THE WITNESS: Ms. Parfitt asked me to</p> <p>3 amend it.</p> <p>4 BY MS. BROWN:</p> <p>5 Q. Okay. Was it your idea to include the</p> <p>6 pooled study and Health Canada in your amended</p> <p>7 report?</p> <p>8 A. I believe it was my idea to add the</p> <p>9 pooled study. I had seen that published in JAMA.</p> <p>10 The final screening report I believe was --</p> <p>11 Ms. Parfitt informed me that it was available and</p> <p>12 suggested that it be added to the report.</p> <p>13 Q. Fair to say you learned of Health</p> <p>14 Canada's final report from Ms. Parfitt?</p> <p>15 MS. PARFITT: Objection.</p> <p>16 THE WITNESS: I believe so. I'm</p> <p>17 hesitating because I've also been following the</p> <p>18 progress for these various things for talc and</p> <p>19 ovarian cancer, so every couple weeks or so I do a</p> <p>20 Google search and a PubMed search.</p> <p>21 So I believe that if I had not seen</p> <p>22 the Canada result, as soon as Ms. Parfitt notified</p> <p>23 me, I soon after saw some press about it. So</p> <p>24 that's why I'm hesitating. I can't remember which</p> <p>25 came first, whether I saw the press first or</p>	<p style="text-align: right;">Page 12</p> <p>1 list to show, but I printed off the JAMA article by</p> <p>2 O'Brien, et al; the editorial by, I believe it was</p> <p>3 Gossett, some letters from the editor about that</p> <p>4 article, letters to the JAMA editor, and recently a</p> <p>5 review article by Wentzensen and O'Brien. And then</p> <p>6 from that I identified one of their references of a</p> <p>7 new case control study published this summer by</p> <p>8 Davis on ovarian cancer and -- and powder use in</p> <p>9 African American and white women.</p> <p>10 Q. Any other articles or information you</p> <p>11 have found from Google searching or PubMed</p> <p>12 searching that inform your opinion in this case?</p> <p>13 A. If it's okay, I could look through my</p> <p>14 materials, but I can't think right now of others.</p> <p>15 Q. Sure. I think that's fine. And I have</p> <p>16 some specific questions for you, so we'll take a</p> <p>17 look at the list in a moment.</p> <p>18 But just sitting here right now,</p> <p>19 anything else that comes to your mind in terms of</p> <p>20 additional materials you found either from Google</p> <p>21 or PubMed?</p> <p>22 A. I can't think of anything right now.</p> <p>23 Q. Fair enough. If I could direct your</p> <p>24 attention, Doctor, to -- I'm going to use the red</p> <p>25 line, which is what we marked as Exhibit 3, 'cause</p>
<p style="text-align: right;">Page 11</p> <p>1 Ms. Parfitt notified me.</p> <p>2 BY MS. BROWN:</p> <p>3 Q. You mentioned every couple of weeks you</p> <p>4 do a Google search or a PubMed search. Can you</p> <p>5 tell me a little bit about that and what that</p> <p>6 entails?</p> <p>7 A. Just -- I just look at -- just simple</p> <p>8 words, just "talc" and "ovarian cancer." I do that</p> <p>9 in both.</p> <p>10 Q. And other than the pool study and the</p> <p>11 Health Canada assessment, have you found anything</p> <p>12 from your Google searching that informs your</p> <p>13 opinions in this case?</p> <p>14 A. I don't believe that, from my Google</p> <p>15 searching, I saw something that informed the case.</p> <p>16 Q. Okay. Have you printed out any articles</p> <p>17 or any information from this Google searching that</p> <p>18 we're talking about?</p> <p>19 A. From Google search, I'm not sure if I</p> <p>20 printed Health Canada from that, if I could link to</p> <p>21 that. The articles I printed not from a Google</p> <p>22 search.</p> <p>23 Q. Okay. Have you printed any particular</p> <p>24 articles from your PubMed searching?</p> <p>25 A. Yes. And I would need to go through my</p>	<p style="text-align: right;">Page 13</p> <p>1 I have a couple of questions about some things that</p> <p>2 have changed in your report.</p> <p>3 And when you have a moment to get to</p> <p>4 that, I would direct you to page 4. And if you</p> <p>5 look under Credentialed Expertise and Experience, I</p> <p>6 see that you've changed the title of full member at</p> <p>7 the Fred Hutch Center to full professor. And I</p> <p>8 wanted to ask you why that change, and what's the</p> <p>9 significance of that change.</p> <p>10 A. So this is not a promotion, this</p> <p>11 is -- Fred Hutchinson Cancer Research Center, they</p> <p>12 originally used a title called member. It was a</p> <p>13 member track. You start off as assistant member,</p> <p>14 then go to associate member, and then full member.</p> <p>15 So I've been a full member for, I don't know, 10 or</p> <p>16 15 years. I'd have to look at my CV to see.</p> <p>17 And then a couple of years ago, I</p> <p>18 believe it was the director of the center,</p> <p>19 spearheaded changing all of our titles to</p> <p>20 professor -- the professor track. And so these</p> <p>21 were not promotions for us, these were change of</p> <p>22 name to be more in line with our academic</p> <p>23 credentials. So I've always been on the professor</p> <p>24 track -- the research professor track at the</p> <p>25 university, but now this changes the actual title</p>

<p style="text-align: right;">Page 14</p> <p>1 of what my position is.</p> <p>2 Q. And has anything other than the title</p> <p>3 changed for you at Fred Hutch?</p> <p>4 A. No, my -- I can't recall what percent</p> <p>5 time I was when I last testified. Right now I'm</p> <p>6 60 percent. It might have been a little more than</p> <p>7 that. And then the other thing is because of state</p> <p>8 laws, they changed me to an hourly worker rather</p> <p>9 than non-hourly. So anybody that's part-time is</p> <p>10 considered an hourly worker. Those are the only</p> <p>11 changes.</p> <p>12 Q. Are you considered a part-time employee</p> <p>13 of the Fred Hutchinson Cancer Center?</p> <p>14 A. Yes.</p> <p>15 Q. And when did you become a part-time</p> <p>16 employee?</p> <p>17 A. I'd have to look through my CV. It's</p> <p>18 quite a while ago. I started out as -- I was a</p> <p>19 hundred percent for quite awhile, and then it went</p> <p>20 to 90 percent, and then gradually moved down.</p> <p>21 Q. Okay. And are you a tenured professor?</p> <p>22 A. We do not have tenure at Fred Hutchinson.</p> <p>23 We go through reviews every five years, and</p> <p>24 continued lab and other support if that review goes</p> <p>25 well, but it's not a tenure.</p>	<p style="text-align: right;">Page 16</p> <p>1 teach students in a formal class that meets every</p> <p>2 semester?</p> <p>3 A. No. I teach individual students.</p> <p>4 Q. And are you currently doing that right</p> <p>5 now, Doctor?</p> <p>6 A. No, I don't have any students right now.</p> <p>7 Q. Okay. So going back then if we could,</p> <p>8 let's just start with what you're doing now as a</p> <p>9 professor at the Fred Hutchinson Cancer Research</p> <p>10 Center. You said you're working there about 60 --</p> <p>11 60 percent; is that right?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. And tell me what you do during the</p> <p>14 time that you're working there.</p> <p>15 A. I direct studies and I direct analyses of</p> <p>16 research data and writing up papers, presenting</p> <p>17 data at conferences -- right now it's virtual --</p> <p>18 and administering grants and -- so pretty much the</p> <p>19 same thing I've been doing all along.</p> <p>20 Q. Have you had any discussions with the</p> <p>21 Fred Hutchinson Cancer Research Center since your</p> <p>22 MDL testimony regarding your expert witness work in</p> <p>23 the talcum powder litigation?</p> <p>24 MS. PARFITT: Objection, vague.</p> <p>25 THE WITNESS: When you say discussions,</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Okay. Are you currently teaching any</p> <p>2 courses at Fred Hutchinson Cancer Center?</p> <p>3 A. No, I'm not.</p> <p>4 Q. Okay. Have you ever had teaching</p> <p>5 responsibilities?</p> <p>6 A. I have done teaching of individual</p> <p>7 students, post-docs, pre-docs, from the university,</p> <p>8 and so they come over and they work with me and</p> <p>9 they have independent credit. So -- and</p> <p>10 undergraduates, too. So quite a bit of that over</p> <p>11 the years. And then also giving guest lectures at</p> <p>12 the university.</p> <p>13 Q. Okay. Have you ever been the professor</p> <p>14 of a regular class that meets every semester or</p> <p>15 something like that?</p> <p>16 A. Where I've been responsible for the</p> <p>17 class?</p> <p>18 Q. Correct.</p> <p>19 A. No.</p> <p>20 Q. Okay. Have you ever been a professor at</p> <p>21 a university?</p> <p>22 A. I am a professor. It's called the</p> <p>23 research professor at the University of Washington</p> <p>24 School of Public Health and the School of Medicine.</p> <p>25 Q. And as a research professor there, do you</p>	<p style="text-align: right;">Page 17</p> <p>1 what do you mean?</p> <p>2 BY MS. BROWN:</p> <p>3 Q. Yeah, let's break it down. I'm</p> <p>4 interested in discussions generally, but let's talk</p> <p>5 about does the Fred Hutchinson institution require</p> <p>6 you to disclose your expert consulting work?</p> <p>7 A. Yes. I have to ask permission before</p> <p>8 doing this work. And so I asked and received</p> <p>9 permission at the time when I had my -- did my</p> <p>10 first work with Ms. Parfitt in providing</p> <p>11 consultation.</p> <p>12 And then as this continues each year,</p> <p>13 I have to report what kind of funding I'm getting</p> <p>14 from this outside work.</p> <p>15 Q. And how do you do that? Is it a written</p> <p>16 document that discloses the funding?</p> <p>17 A. It's online now. Every year I have to</p> <p>18 complete that.</p> <p>19 Q. Okay. Do you keep a copy of this funding</p> <p>20 disclosure that you file annually?</p> <p>21 A. I believe it's online. I don't keep a</p> <p>22 paper copy of it myself.</p> <p>23 Q. Okay. Could you access it today if you</p> <p>24 wanted to look at your past disclosures?</p> <p>25 A. It might be difficult for me to do it</p>



<p style="text-align: right;">Page 18</p> <p>1 quickly, but I could do it at some point, sure.                  2 Q. Okay. And other than disclosing the                  3 amount of money you've received, do you have to                  4 disclose anything else?                  5 MS. PARFITT: And Alli, if I can just get                  6 a clarification. You're talking about any                  7 disclosures of funding since the time of her last                  8 deposition, correct?                  9 MS. BROWN: Correct. And thanks,                  10 Michelle.                  11 BY MS. BROWN:                  12 Q. And Dr. McTiernan, just so you know, the                  13 focus of my questioning today is going to be new                  14 parts of your report, new reliance materials and                  15 things that have happened since you testified in                  16 the Daubert hearing in the summer of 2019, okay?                  17 A. Uh-huh. Okay.                  18 Q. So in terms of disclosures you've made                  19 since that time, do you need to give a description                  20 of the type of work you're doing or anything other                  21 than the amount of money you've received?                  22 A. They just ask for what the entity is.                  23 And in this case it's Ms. Parfitt's firm, but she's                  24 handling all of the -- the work that I do. They                  25 ask specific questions about whether the work I'm</p>	<p style="text-align: right;">Page 20</p> <p>1 not related to the work you're doing at Fred                  2 Hutchinson; is that right?                  3 MS. PARFITT: Objection, misstates her                  4 testimony.                  5 THE WITNESS: What I -- say -- could you                  6 say your question again?                  7 BY MS. BROWN:                  8 Q. Sure. When you fill out these                  9 disclosures at the Fred Hutchinson Center, you                  10 answer -- or you disclose that the work you're                  11 doing as an expert witness in the talcum powder                  12 litigation is not related to the work you're doing                  13 at the Fred Hutchinson Cancer Research Center;                  14 correct?                  15 MS. PARFITT: Object, vague and misstates                  16 her testimony.                  17 THE WITNESS: It's not quite the way you                  18 stated it. It's -- they're asking me -- and it's                  19 just something you check off, is your work -- is                  20 the outside work related directly to the studies in                  21 which I'm working with human subjects. And so                  22 since I don't have studies specifically on talcum                  23 powder product use and ovarian cancer, then I say                  24 no to that question.                  25 BY MS. BROWN:</p>
<p style="text-align: right;">Page 19</p> <p>1 doing is related to the work I do at the -- my                  2 institution in terms of what grants I hold. They                  3 ask if -- they ask the particular position -- so                  4 for any outside work, they want to know if you're a                  5 CEO of something or if you get patent -- you know,                  6 so those -- those types of specific questions they                  7 have in mind. Yeah.                  8 Q. Okay.                  9 A. So those are the things I have to                  10 disclose to them.                  11 Q. And when they asked if the expert work                  12 that you're doing for Ms. Parfitt's firm is related                  13 to the work that you do at the institution, how did                  14 you answer that question?                  15 MS. PARFITT: Objection.                  16 THE WITNESS: So the way they ask it is                  17 is it related to the work I do with -- with grants                  18 in which I'm dealing with patients directly or                  19 human subjects, is how they word it. And since I                  20 do not have studies of talcum powder products and                  21 ovarian cancer risk, then that's how I am able to                  22 answer that as no, I don't.                  23 BY MS. BROWN:                  24 Q. On this disclosure statement you answer                  25 that the work you're doing as an expert witness is</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Can you think of any other questions on                  2 the form that we're discussing?                  3 A. I believe it's a broad question. They                  4 ask about spouse also, close family members,                  5 and -- and I think that's -- I think that covers                  6 it.                  7 Q. Okay. And do you receive additional                  8 correspondence either approving or denying your                  9 continued work as an expert after you fill out this                  10 form?                  11 A. I'm trying to recall. There is -- there                  12 is a form on record that it's approved. And I                  13 can't recall if every year I receive something, but                  14 if there is an issue, then I hear from them.                  15 Q. Has there -- have you ever heard from                  16 them in follow up?                  17 A. There -- not for this issue.                  18 Q. Okay. You mentioned -- it sounds like                  19 that you have a time in your mind when you did hear                  20 from them; is that fair?                  21 A. It was on a different issue. It was --                  22 it was for another request that I had, and they                  23 asked a question and determined that I did not have                  24 a conflict.                  25 Q. Okay. Was that a different expert</p>

<p style="text-align: right;">Page 22</p> <p>1 witness work you were doing?</p> <p>2 A. No, it was not.</p> <p>3 Q. Did that have to do with talcum powder?</p> <p>4 A. No.</p> <p>5 Q. What was it?</p> <p>6 MS. PARFITT: Objection, relevancy.</p> <p>7 THE WITNESS: It was for a book that I</p> <p>8 had written, and they determined that it was not</p> <p>9 related to my work.</p> <p>10 BY MS. BROWN:</p> <p>11 Q. And I understand actually you have -- you</p> <p>12 have just published a book, right, called Cured; is</p> <p>13 that right?</p> <p>14 A. That's correct.</p> <p>15 Q. And you previously published a book</p> <p>16 called Starved; is that right?</p> <p>17 A. That was in 2016.</p> <p>18 Q. Okay. And both of those books deal with</p> <p>19 sort of your personal experiences; is that right?</p> <p>20 A. That's correct.</p> <p>21 Q. Do either of those books talk at all</p> <p>22 about talcum powder?</p> <p>23 MS. PARFITT: Objection to the extent</p> <p>24 counsel had the opportunity to inquire about the</p> <p>25 2016 book Starved. Certainly as to the more recent</p>	<p style="text-align: right;">Page 24</p> <p>1 A. That's right.</p> <p>2 Q. Okay. And how much was that?</p> <p>3 A. I don't recall -- I don't recall the</p> <p>4 exact amount. I believe it was about \$1,500.</p> <p>5 Q. Okay. And the book is now being sold;</p> <p>6 right?</p> <p>7 A. Correct.</p> <p>8 Q. And if enough copies are sold, do you</p> <p>9 stand to make money from the book?</p> <p>10 A. I could, yes.</p> <p>11 Q. And does that money go to you or do you</p> <p>12 have to share that with your institution, Fred</p> <p>13 Hutchinson?</p> <p>14 A. It goes to me. The institution did not</p> <p>15 consider it something that they needed to -- to be</p> <p>16 involved with.</p> <p>17 Q. And in terms of your expert witness work</p> <p>18 regarding talcum powder, do the fees that you make</p> <p>19 go to you, or do you have to share a portion of</p> <p>20 that with the Fred Hutchinson Center?</p> <p>21 A. They go just to me.</p> <p>22 Q. And what percentage right now in 2021,</p> <p>23 what percentage of your time is devoted to expert</p> <p>24 witness work?</p> <p>25 A. Expert witness? So this -- you're</p>
<p style="text-align: right;">Page 23</p> <p>1 book, Cured, that's an area of inquiry.</p> <p>2 BY MS. BROWN:</p> <p>3 Q. Sure. So let's talk about Cured. Cured</p> <p>4 is a book that you recently published, right,</p> <p>5 Doctor?</p> <p>6 A. Yes.</p> <p>7 Q. And as I understand it, you disclosed</p> <p>8 that to your institution; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And they had a follow-up question</p> <p>11 to you. What was that question?</p> <p>12 A. I don't recall the exact wording of it,</p> <p>13 but I believe it was along the lines of does this</p> <p>14 have anything to do with my work -- my current work</p> <p>15 at Fred Hutchinson.</p> <p>16 Q. Okay. And how did you respond to that</p> <p>17 question?</p> <p>18 A. I responded no, it did not.</p> <p>19 Q. Okay. And in terms of the proceeds from</p> <p>20 your new book, Cured, do they go entirely to you?</p> <p>21 A. I don't have proceeds from it. It was an</p> <p>22 advance, which went to me.</p> <p>23 Q. Okay. Describe that to me. The</p> <p>24 publishing company paid you an advance to write the</p> <p>25 book?</p>	<p style="text-align: right;">Page 25</p> <p>1 talking about cases where I've been disclosed as an</p> <p>2 expert witness?</p> <p>3 Q. Well, that's a fair question. Let me see</p> <p>4 if I can make it easier.</p> <p>5 Are you doing any other expert work</p> <p>6 other than talcum powder?</p> <p>7 MS. PARFITT: And Dr. McTiernan, I would</p> <p>8 object to the extent it's relevant to any</p> <p>9 disclosure of your name. If you're not being</p> <p>10 disclosed as an expert, you're certainly not to</p> <p>11 discuss that matter if it's relevant.</p> <p>12 THE WITNESS: Okay. So the question then</p> <p>13 is for this -- this talc work?</p> <p>14 BY MS. BROWN:</p> <p>15 Q. Let's break it down even a little more.</p> <p>16 You are currently working as an expert witness in</p> <p>17 the talc litigation, fair?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Are you doing any other expert</p> <p>20 witness work outside of talc?</p> <p>21 A. I've not been disclosed for any other</p> <p>22 work.</p> <p>23 Q. Okay. Understood. Have you been</p> <p>24 disclosed in any other expert witness work having</p> <p>25 nothing to do with talc?</p>



<p style="text-align: right;">Page 26</p> <p>1 MS. PARFITT: Objection.                  2 THE WITNESS: No.                  3 BY MS. BROWN:                  4 Q. When did you start doing the other expert                  5 witness work for which you have not been disclosed?                  6 MS. PARFITT: Objection. And                  7 Dr. McTiernan, again, I'd counsel you with regard                  8 to any discussions about the nature of that work,                  9 names of individuals, all that would be frankly, at                  10 this time, proprietary and not information to                  11 disclose to Ms. Brown.                  12 THE WITNESS: Oh, okay. So I'm going to                  13 decline to disclose it then.                  14 BY MS. BROWN:                  15 Q. Yeah, except I didn't ask anything                  16 Ms. Parfitt objected to. I asked when you started                  17 doing the other expert work for which you have not                  18 been disclosed.                  19 MS. PARFITT: That's fair, Alli. Go                  20 ahead, Dr. McTiernan.                  21 THE WITNESS: Okay. Now I have to try to                  22 remember. And I don't have the date in mind. I                  23 could look it up, but I don't have it in mind. I'm                  24 sorry.                  25 BY MS. BROWN:</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Sure. Well, you understand you're an                  2 expert here in lawsuits filed against Johnson &amp;                  3 Johnson, and the consulting work you're doing, is                  4 that in the context of lawsuits filed against                  5 another company?                  6 MS. PARFITT: Objection. Dr. McTiernan,                  7 to the extent you know.                  8 THE WITNESS: From my perspective, it's                  9 reviewing science.                  10 BY MS. BROWN:                  11 Q. Okay. Are you doing that work for                  12 Ms. Parfitt or somebody at her firm?                  13 MS. PARFITT: Objection.                  14 THE WITNESS: No.                  15 BY MS. BROWN:                  16 Q. How did you -- strike that. So what                  17 percent of your time is spent on either consulting                  18 or export work like the kind of work you're doing                  19 in this litigation?                  20 A. I can't calculate that right now. I                  21 wouldn't be able to calculate that.                  22 Q. And why is that? Like what's the problem                  23 with that?                  24 A. Because in my scientific work where I'm                  25 paid 60 percent, it's never exactly that</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Okay.                  2 A. But it's -- but it's been within the last                  3 half year, approximately.                  4 Q. Within the last six months you have                  5 started to do non-talc-related expert witness work;                  6 is that fair?                  7 A. I don't know if I can call myself expert                  8 witness work -- call it expert witness work, yeah.                  9 Q. Well, would you call it consulting work?                  10 How would you describe it?                  11 A. Yes.                  12 Q. Okay. Within the last six months you                  13 have started to do consulting work for something                  14 that you haven't been disclosed in yet; is that                  15 fair?                  16 A. Yes.                  17 Q. Okay. Is that consulting work related to                  18 litigation?                  19 MS. PARFITT: Objection.                  20 THE WITNESS: I don't know if it's yet                  21 related to litigation.                  22 BY MS. BROWN:                  23 Q. Okay.                  24 A. I don't really understand how to answer                  25 that question.</p>	<p style="text-align: right;">Page 29</p> <p>1 proportion. It's often higher. And so therefore,                  2 to say what percent of my time is paid from my                  3 institutional work and what percent is on this                  4 consulting work is very difficult to estimate.                  5 What I do have -- I believe you have                  6 the invoices that I've submitted for -- for the                  7 talc case -- cases, but in terms of how much                  8 I -- what percent for that plus my other -- plus                  9 Fred Hutch, I think it's very difficult to -- to                  10 calculate that. I think, you know, if you look at                  11 what my hours are, I think that's the best answer I                  12 could get for talcum powder product use.                  13 Q. What's the estimate of the number of                  14 hours you spend per week on expert or consulting                  15 work?                  16 A. I don't have that information right now.                  17 I would have to go back and calculate it. You do                  18 have what I've done for talcum powder product use,                  19 so that -- that would be useful for that. And then                  20 I don't have a calculation right in front of me for                  21 any outside otherwise consulting work.                  22 Q. Sure. And I think what you're telling                  23 me, Dr. McTiernan, is even though you're                  24 60 percent, you wind up doing more work than that                  25 at Fred Hutch? Is that what you're saying?</p>

<p style="text-align: right;">Page 30</p> <p>1 A. It can be.</p> <p>2 Q. Okay. And I'm not trying to hold you to</p> <p>3 any exact percentage, but some people would say,</p> <p>4 you know, I do about half of my work at Fred</p> <p>5 Hutchinson; I do about half consulting or</p> <p>6 litigation work. Do those general 50/50</p> <p>7 percentages apply in your case?</p> <p>8 MS. PARFITT: Objection, misstates her</p> <p>9 testimony.</p> <p>10 THE WITNESS: The only thing I can say is</p> <p>11 that at Fred Hutchinson I'm a 60 percent person.</p> <p>12 So 60 percent of my time overall is Fred</p> <p>13 Hutchinson.</p> <p>14 BY MS. BROWN:</p> <p>15 Q. Okay. That's fair. And what about in</p> <p>16 terms of percentage of your income from consulting</p> <p>17 or litigation work, what's your best estimate</p> <p>18 there?</p> <p>19 A. I don't have that information. I could</p> <p>20 calculate that, but I don't have that in my head</p> <p>21 right now.</p> <p>22 Q. So I looked at your invoices, and it</p> <p>23 looks like in the talcum powder litigation you made</p> <p>24 close to \$300,000. Does that sound right to you?</p> <p>25 MS. PARFITT: Objection. Is that from</p>	<p style="text-align: right;">Page 32</p> <p>1 of how much money you make at Fred Hutchinson?</p> <p>2 MS. PARFITT: Objection, misstates her</p> <p>3 testimony.</p> <p>4 THE WITNESS: I don't have it in my head.</p> <p>5 If I was to answer that for anybody, I would need</p> <p>6 to look at my records, and then I would have it.</p> <p>7 BY MS. BROWN:</p> <p>8 Q. Do you enlist the assistance of anyone at</p> <p>9 Fred Hutchinson to help you with the work you do as</p> <p>10 an expert witness in the talcum powder litigation?</p> <p>11 A. No.</p> <p>12 Q. Do you use any Fred Hutchinson resources</p> <p>13 or services in terms of working as an expert</p> <p>14 witness in the talcum powder litigation?</p> <p>15 A. I use the Fred Hutchinson library.</p> <p>16 Q. Is that an electronic library or a</p> <p>17 physical library?</p> <p>18 A. Electronic.</p> <p>19 Q. And so do you download articles from the</p> <p>20 Fred Hutchinson electronic library for use as your</p> <p>21 work as an expert witness in the talcum powder</p> <p>22 litigation?</p> <p>23 A. Yes.</p> <p>24 Q. And I noticed on some of your invoices</p> <p>25 you've actually charged the plaintiffs' lawyers for</p>
<p style="text-align: right;">Page 31</p> <p>1 the beginning, or --</p> <p>2 MS. BROWN: Correct.</p> <p>3 MS. PARFITT: -- or --</p> <p>4 MS. BROWN: Correct.</p> <p>5 MS. PARFITT: And we're supposed to be</p> <p>6 inquiring about from the last deposition, forward,</p> <p>7 but that's fair. Go ahead.</p> <p>8 BY MS. BROWN:</p> <p>9 Q. Does that sound about right to you,</p> <p>10 Dr. McTiernan?</p> <p>11 A. I would -- again, I apologize, but I</p> <p>12 didn't know I was going to be asked this specific</p> <p>13 question, so I haven't calculated that. But you</p> <p>14 have the invoices, so you can see that. I don't</p> <p>15 have in my head what my Fred Hutchinson salary is.</p> <p>16 I could get that for you and then you could do that</p> <p>17 calculation.</p> <p>18 Q. Okay. You don't know how much money you</p> <p>19 make in your regular job at Fred Hutchinson?</p> <p>20 A. I don't have it in my head.</p> <p>21 Q. No, do you have an estimate?</p> <p>22 A. I need to get out my records and look at</p> <p>23 it.</p> <p>24 Q. Okay. So in terms of what you would tell</p> <p>25 a jury, it's that you don't even have an estimate</p>	<p style="text-align: right;">Page 33</p> <p>1 downloading articles or things like that. Do you</p> <p>2 give that money back to Fred Hutch?</p> <p>3 A. If there was a charge that Hutch had to</p> <p>4 pay and then I received money back, then yes, I</p> <p>5 would pay that back.</p> <p>6 Q. Does Fred Hutchinson know that you use</p> <p>7 their library to access articles for your expert</p> <p>8 witness work?</p> <p>9 A. They allow me to use it for any reason.</p> <p>10 I also can use the University of Washington</p> <p>11 library.</p> <p>12 Q. Do either Fred Hutchinson or the</p> <p>13 University of Washington have written policies</p> <p>14 concerning expert witness work of employees?</p> <p>15 MS. PARFITT: Objection.</p> <p>16 THE WITNESS: The policies, to my</p> <p>17 knowledge, don't refer to the use of the libraries.</p> <p>18 Those are considered intellectual services. And to</p> <p>19 my knowledge, they've never told me that I'm</p> <p>20 restricted on how I can use them.</p> <p>21 BY MS. BROWN:</p> <p>22 Q. But are there written policies -- are you</p> <p>23 aware of written policies at either Fred Hutchinson</p> <p>24 or University of Washington governing employees'</p> <p>25 work as an expert witness or a consultant?</p>

<p style="text-align: right;">Page 34</p> <p>1 A. I haven't seen specific things that talk  2 just about an expert witness in terms of the  3 library use.  4 Q. And putting aside the library, are there  5 written policies that govern employees' work at  6 Fred Hutch or the University of Washington as an  7 expert witness?  8 A. I don't -- for the Fred Hutchinson, I  9 don't believe there are. I haven't -- I don't  10 recall seeing that. With the university, for  11 expert witness, since I'm not an employee of the  12 university, I have an appointment there. I'm not  13 an employee. I have not searched for employee  14 regulations.  15 Q. Okay. What do you mean, you're not an  16 employee? How are you affiliated?  17 A. I have an affiliated appointment as a  18 faculty member, but I do not receive a salary from  19 them. I'm considered a University of Washington  20 employee.  21 Q. Okay. Who appointed you?  22 A. The -- it was a faculty search process  23 years ago through the -- primarily through the  24 department of epidemiology and the school of public  25 health. So it would be the chair at that time, and</p>	<p style="text-align: right;">Page 36</p> <p>1 BY MS. BROWN:  2 Q. Okay. Since the time of your last  3 deposition have you done any work with the American  4 College of Epidemiology?  5 A. No.  6 Q. What about The Obesity Society?  7 A. No.  8 Q. What about the American College of  9 Sports Medicine?  10 A. So since the last deposition, I gave a  11 talk -- and I think I mention it in my CV -- The  12 Wolf Talk. It's an honor talk, although you do not  13 have to be a member in order to give that talk.  14 But I don't have -- I'd have to look at my CV and  15 see the date and see if that was before or after  16 the last deposition.  17 Q. Since your last deposition,  18 Dr. McTiernan, have you had any conversations with  19 anyone at the Fred Hutchinson Cancer Research  20 Center regarding talcum powder?  21 A. Yes.  22 Q. And tell me about that, please.  23 A. There were two occasions. One was when I  24 was asked to present to US Congress on talcum  25 powder product use and ovarian cancer. And so we</p>
<p style="text-align: right;">Page 35</p> <p>1 then the dean of the school of public health at  2 that time, and then that's renewed yearly.  3 Q. Are you currently doing any work at the  4 University of Washington School of Public Health?  5 A. No.  6 Q. Okay. And what about the University of  7 Washington Department of Medicine, are you  8 currently doing any work there?  9 A. No.  10 Q. When's the last time you did work at  11 either of those institutions?  12 A. I don't do work at them. I have had  13 students in the past from both of those  14 institutions that have come to Fred Hutchinson to  15 work with me.  16 Q. And when's the last time that happened?  17 A. I don't know. I'd have to look at my CV.  18 Q. Okay. Within the last five years have  19 you had students from either of those institutions  20 come to work with you at Fred Hutch?  21 MS. PARFITT: Objection with regard to  22 the timing. Anything since the time of your last  23 deposition, Dr. McTiernan.  24 THE WITNESS: Not since the time of my  25 last deposition, no.</p>	<p style="text-align: right;">Page 37</p> <p>1 have that information. I believe it was  2 March 2019. So when I was asked to do that by the  3 US Congress subcommittee, I went to the Fred  4 Hutchinson -- I contacted the Fred Hutchinson vice  5 president for government affairs and then worked  6 with her.  7 So I talked with her about this  8 request, and then she helped me through it. She  9 had experience with the US Congress, and so I had  10 several conversations with her about the process.  11 And then she saw this and helped me with the  12 statement that I made to them and then saw and  13 reviewed the report that they asked me to provide  14 them. She also was there with me throughout the  15 time both before and after the actual testimony.  16 Q. Okay.  17 A. So I had a conversation with her.  18 Q. What's her name, Doctor?  19 A. I believe it's Jennifer Griffith. I  20 would need to look that up.  21 Q. Okay. I'm sorry. Go ahead, you were  22 going to describe a second --  23 A. Start again?  24 Q. I interrupted you. I'm sorry. You were  25 going to describe the second instance where you had</p>

<p style="text-align: right;">Page 38</p> <p>1 a conversation with someone at Fred Hutchinson  2 regarding talcum powder.  3 A. The second was when I was asked to speak  4 with our public health science faculty meeting. So  5 this was a -- they call it a mini Ted talk. It was  6 about five minutes long. And they asked me to talk  7 about something that I've been doing recently, so I  8 talked about this issue of talking with Congress  9 for a specific issue related to epidemiology  10 related to public health.  11 Q. And do you recall when the public health  12 sciences mini Ted talk took place?  13 A. I don't. I'd have to look that up. I  14 don't have it in my head.  15 Q. Did you --  16 A. But -- I'm sorry. It was after the  17 presentation to Congress.  18 Q. Okay. Did you prepare any notes or  19 slides to use at the mini Ted talk?  20 A. I believe I had slides.  21 MS. BROWN: I'll request production of  22 those slides. And I'll follow up with Ms. Parfitt.  23 And for the record, we'll also request production  24 of the expert witness disclosures we were talking  25 about this morning.</p>	<p style="text-align: right;">Page 40</p> <p>1 your last deposition regarding talc?  2 A. No, I don't believe I have. No.  3 Q. Since your last deposition have you  4 spoken to anyone at Health Canada regarding talc?  5 A. I submitted public comments. And we have  6 provided a document of what I submitted, and the  7 date of that is on there. I believe it was  8 February 2019, perhaps. But I would need to check  9 the date.  10 So I submitted my comments. And a few  11 weeks after that I received an e-mail from one of  12 their Health Canada staff people asking me if I  13 would be interested in helping them with any  14 further issues or questions they might have. And I  15 said I'd be happy to help, but I heard nothing else  16 from them until later I received a request from  17 them for release of documents.  18 They said they had a third party that  19 wanted all of the documents that I had provided.  20 In this case it was just -- I believe the only  21 issues that they were asking about was those public  22 comments that I submitted.  23 Q. Okay. Let me see if I can understand  24 that. Was it your idea to reach out to Health  25 Canada initially?</p>
<p style="text-align: right;">Page 39</p> <p>1 BY MS. BROWN:  2 Q. Tell me what you recall about what you  3 said in the mini Ted talk regarding talc.  4 A. I can't recall exactly, but the gist was  5 the ways that we communicate in public health, that  6 we do it through writing, through giving talks and,  7 in this case, I gave testimony to Congress. So  8 that -- from my recollection, that was what I  9 talked about.  10 Q. Do you recall discussing the substance of  11 the talc ovarian cancer epidemiology?  12 A. I don't believe that I did, but I would  13 need to look at my slides to see if I did.  14 Q. Do you recall any questions that you  15 received during that talk?  16 A. I don't. It was a pretty quick talk, and  17 part of a big meeting.  18 Q. Fair enough. Other than the two  19 instances you just described, since your last  20 deposition have you had any discussions with anyone  21 else at Fred Hutchinson regarding talc?  22 A. I don't believe I have, no.  23 Q. What about any of the other institutions  24 you're affiliated with -- including the University  25 of Washington -- have you spoken to anyone since</p>	<p style="text-align: right;">Page 41</p> <p>1 A. I believe it was. There was -- I knew  2 that there was a public commentary period, because  3 it's obvious on their website, and so I submitted  4 comments.  5 Q. Did you have discussions with the lawyers  6 representing plaintiffs in this litigation prior to  7 submitting these comments?  8 MS. PARFITT: Objection.  9 THE WITNESS: I believe that we did talk  10 about it, that -- that we talked about that it was  11 a possibility. I was not asked to specifically do  12 it. It wasn't one of my -- one of my -- it wasn't  13 asked of me as a consultant. I wasn't paid for  14 anything I did with Health Canada. I was -- I  15 think we just talked about it that it was a  16 possibility.  17 BY MS. BROWN:  18 Q. Okay. And you said that you received  19 some follow-up correspondence asking if you would  20 be willing to help Health Canada; is that right?  21 A. Yes. And I believe we have those exact  22 questions in the documents that we submitted.  23 Q. Yep. And we'll take a look at that in a  24 second. And then I understand at some point you  25 received a request to release documents. Is that</p>

<p style="text-align: right;">Page 42</p> <p>1 how you described it?</p> <p>2 A. To release any of my communications with</p> <p>3 them. There was a third party asking to release</p> <p>4 these -- any communications, and the only thing</p> <p>5 that they note that they wanted to release of mine</p> <p>6 was my -- those public comments that I had</p> <p>7 submitted.</p> <p>8 Q. I understand. Okay. Any other</p> <p>9 discussions or correspondence with Health Canada</p> <p>10 since your last deposition?</p> <p>11 A. I believe that's it.</p> <p>12 Q. Have you, since your last deposition, had</p> <p>13 any correspondence with the United States Food and</p> <p>14 Drug Administration regarding talc?</p> <p>15 A. No, I haven't.</p> <p>16 Q. Okay. One of the documents that you</p> <p>17 produced, Dr. McTiernan, in advance of your</p> <p>18 deposition is a document from the FDA to a</p> <p>19 citizens -- to a citizen regarding a citizens'</p> <p>20 petition regarding talc. Do you recall looking at</p> <p>21 that document?</p> <p>22 MS. PARFITT: Could you identify the</p> <p>23 document you're speaking of, please, Ms. Brown?</p> <p>24 MS. BROWN: Sure.</p> <p>25 MS. PARFITT: And Dr. McTiernan, you can</p>	<p style="text-align: right;">Page 44</p> <p>1 reference?</p> <p>2 Q. In your amended report, Dr. McTiernan,</p> <p>3 which we've marked as Exhibit 2, if you take a look</p> <p>4 at the amended report red line, at the very end it</p> <p>5 includes an Exhibit C, and that's titled Materials</p> <p>6 Considered. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Did you type this Exhibit C in</p> <p>9 materials considered?</p> <p>10 A. So I see an Exhibit C. I don't see</p> <p>11 anything that says materials -- in my case it's</p> <p>12 purple and it says a document -- oh, yeah, I see</p> <p>13 it. Okay. No, I did not type this.</p> <p>14 Q. Okay. Have you ever seen Exhibit C</p> <p>15 before today?</p> <p>16 A. I'm not sure if I have. I think -- you</p> <p>17 know, I think I have in a different format. I knew</p> <p>18 what all of these exhibits were. And I have a</p> <p>19 note -- I remember making myself a note to look at</p> <p>20 it, so I must have.</p> <p>21 Q. Okay. So Exhibit C, which is attached to</p> <p>22 your amended report, is not something you created;</p> <p>23 is that fair?</p> <p>24 MS. PARFITT: Objection, misstates her</p> <p>25 testimony.</p>
<p style="text-align: right;">Page 43</p> <p>1 look at the notebooks that you have in front of you</p> <p>2 once Ms. Brown identifies it.</p> <p>3 BY MS. BROWN:</p> <p>4 Q. So -- and I misspoke, Dr. McTiernan. One</p> <p>5 of the documents that appears as a new document in</p> <p>6 your amended expert report can be found at tab</p> <p>7 three in the deposition binder. And for the</p> <p>8 record, we will mark this as Exhibit 4.</p> <p>9 And it is an April 1, 2014 letter to</p> <p>10 Sam Epstein at the Cancer Prevention Coalition,</p> <p>11 signed by Dr. Steven Musser from -- the director of</p> <p>12 scientific operations, Center for Food, Safety, and</p> <p>13 Applied Nutrition. Do you see that document,</p> <p>14 ma'am?</p> <p>15 A. Yes, I do.</p> <p>16 Q. When is the first time you saw this</p> <p>17 document?</p> <p>18 A. I don't recall, but I believe it was</p> <p>19 prior to my first deposition at -- I base that in</p> <p>20 part on the date of this.</p> <p>21 Q. So this document appears for the first</p> <p>22 time on your reliance list in the amended report.</p> <p>23 Do you know why that is?</p> <p>24 A. Can you show me where you're talking</p> <p>25 about? Is it on the reliance list or in a</p>	<p style="text-align: right;">Page 45</p> <p>1 BY MS. BROWN:</p> <p>2 Q. Well, I don't want to misstate it.</p> <p>3 Dr. McTiernan, did you create Exhibit C to your</p> <p>4 amended report?</p> <p>5 A. I did not create it.</p> <p>6 Q. Okay. And prior to today have you ever</p> <p>7 seen Exhibit C to your amended report?</p> <p>8 MS. PARFITT: Objection. She stated</p> <p>9 she's seen it in some form.</p> <p>10 THE WITNESS: Much of these are</p> <p>11 references from my report -- from the old report as</p> <p>12 well as the new report.</p> <p>13 BY MS. BROWN:</p> <p>14 Q. You're telling me, Doctor, 'cause I had</p> <p>15 to go back and forth to figure out what was new.</p> <p>16 So I hear you on that. I just want to understand</p> <p>17 how this thing got put together. And it sounds</p> <p>18 like you don't know; is that fair?</p> <p>19 A. So it was put together by Ms. Parfitt's</p> <p>20 team, and it consists of references plus additional</p> <p>21 documents.</p> <p>22 Q. And if you go to page 9 of Exhibit C,</p> <p>23 just a little bit under halfway down the page, you</p> <p>24 see -- actually towards the bottom, letter from</p> <p>25 Steve Musser, FDA, to Samuel Epstein dated April 1,</p>



<p style="text-align: right;">Page 46</p> <p>1 2014. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And I'll represent to you, after</p> <p>4 going back and forth a hundred times with this and</p> <p>5 your original report, this is new to your exhibit,</p> <p>6 your materials considered.</p> <p>7 So my question to you is: When did</p> <p>8 you first see this letter?</p> <p>9 A. I believe I saw it prior to my first</p> <p>10 report. I'm surprised that it wasn't included on</p> <p>11 materials for the first report.</p> <p>12 Q. And are you relying on this letter from</p> <p>13 the FDA to Mr. Epstein in 2014 for your opinions in</p> <p>14 this case?</p> <p>15 MS. PARFITT: I'm going to object to the</p> <p>16 extent that I believe -- and I'll check her</p> <p>17 transcript -- that there was an inquiry about the</p> <p>18 2014 letter to the FDA. So I will -- I would</p> <p>19 object to any further inquiry about that. Why it</p> <p>20 didn't appear in the earlier reliance list, Alli,</p> <p>21 I'm not certain. But as Dr. McTiernan said, it was</p> <p>22 something she had looked at.</p> <p>23 MS. BROWN: Okay. Well, all I can go on</p> <p>24 is the amended report produced to me. And I'm</p> <p>25 telling you, after a lot of back and forth to</p>	<p style="text-align: right;">Page 48</p> <p>1 MS. BROWN: Listen, here's how we're</p> <p>2 doing this deposition. If there's something new,</p> <p>3 I'm going to ask you about it. I'm being real</p> <p>4 careful to keep it to something new. And I</p> <p>5 appreciate the objection, but we need to move on.</p> <p>6 MS. PARFITT: Well, Alli, we do, but if</p> <p>7 there was an inquiry at her deposition, we aren't</p> <p>8 going to move on with regard to this particular</p> <p>9 document. I'm not doubting that it may not have</p> <p>10 been put on a reliance list. What I am checking is</p> <p>11 that it was inquired about at her deposition, which</p> <p>12 is really what one of the guardrails was for this</p> <p>13 deposition.</p> <p>14 MS. BROWN: So you'll check back if you</p> <p>15 have a further objection.</p> <p>16 BY MS. BROWN:</p> <p>17 Q. Dr. McTiernan, have you contacted the FDA</p> <p>18 since your previous deposition to discuss any</p> <p>19 issues of talc and ovarian cancer?</p> <p>20 A. No, I have not.</p> <p>21 Q. Have you informed the United States Food</p> <p>22 and Drug Administration that you are of the opinion</p> <p>23 that talc causes ovarian cancer since the time of</p> <p>24 your last deposition?</p> <p>25 A. No, I have not.</p>
<p style="text-align: right;">Page 47</p> <p>1 figure out what's new, this is something new. And</p> <p>2 my question --</p> <p>3 MS. PARFITT: And Alli, just finish my</p> <p>4 statement. I'm not suggesting that you're wrong</p> <p>5 with regard to the exploration between the two</p> <p>6 reports. What I am suggesting is this was</p> <p>7 something, as Dr. McTiernan has indicated, she did</p> <p>8 have prior to her first report. And I will check</p> <p>9 the transcript, but I believe that there was even a</p> <p>10 question about the FDA letter.</p> <p>11 MS. BROWN: Okay.</p> <p>12 BY MS. BROWN:</p> <p>13 Q. So Dr. McTiernan, you did not add this to</p> <p>14 your amended report; correct?</p> <p>15 A. I can't say yes or no 'cause I don't</p> <p>16 recall not having it for the first report, so</p> <p>17 that's why I can't recall if it's something added</p> <p>18 to the amended.</p> <p>19 Q. Okay. Do you agree with the FDA's</p> <p>20 conclusion in this report regarding the talc</p> <p>21 epidemiology?</p> <p>22 MS. PARFITT: Objection to the very broad</p> <p>23 nature of that question concerning their</p> <p>24 conclusions. And again, I object to the extent it</p> <p>25 was inquired of at her deposition of January 28th.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. Have you had any conversations with the</p> <p>2 Centers For Disease Control since your last</p> <p>3 deposition?</p> <p>4 A. No.</p> <p>5 Q. Have you informed the scientists at the</p> <p>6 Centers For Disease Control that you are of the</p> <p>7 view that talcum powder causes ovarian cancer?</p> <p>8 A. Was that different from the last</p> <p>9 question?</p> <p>10 Q. Yes, it was, 'cause now I'm asking about</p> <p>11 the CDC. Have you informed anyone at the CDC about</p> <p>12 the opinions that you're giving in this lawsuit,</p> <p>13 that talc causes ovarian cancer?</p> <p>14 A. I'm just confused, because there were two</p> <p>15 questions about the FDA, and then there was another</p> <p>16 question about the CDC. And I thought this is the</p> <p>17 same question. So is this a second CDC question</p> <p>18 that's asking the same?</p> <p>19 Q. So here's the question, Dr. McTiernan. I</p> <p>20 noticed in a number of your materials produced and</p> <p>21 materials relied on that you cite to a number of</p> <p>22 CDC documents; correct?</p> <p>23 A. Yes.</p> <p>24 Q. You consider the CDC to be a respected</p> <p>25 public health authority in the United States of</p>



<p style="text-align: right;">Page 50</p> <p>1 America; correct?</p> <p>2 A. For specific issues they are an</p> <p>3 authority, yes.</p> <p>4 Q. Since the time of your last deposition,</p> <p>5 have you called up or corresponded with anyone at</p> <p>6 the CDC to inform them that you are of the opinion</p> <p>7 that talc causes ovarian cancer?</p> <p>8 A. No.</p> <p>9 Q. One of the documents that is new to your</p> <p>10 materials considered is a document called the NCI</p> <p>11 PDQ. Are you familiar with that document?</p> <p>12 A. Yes.</p> <p>13 Q. And when's the first time you saw that</p> <p>14 document?</p> <p>15 A. This most recent version of PDQ I've seen</p> <p>16 within the last couple of months. I can't remember</p> <p>17 what the date was for this particular one.</p> <p>18 Q. Okay. And it's actually tab 24 in the</p> <p>19 binder of materials that you produced in advance of</p> <p>20 your deposition. And we'll mark that as Exhibit 5.</p> <p>21 A. Tab 24?</p> <p>22 Q. Yep, in the binder that says "Documents</p> <p>23 produced by plaintiff." Okay. And the date of the</p> <p>24 printout of this document is August 5, 2021. And</p> <p>25 I'll give you a second to get there.</p>	<p style="text-align: right;">Page 52</p> <p>1 at PDQ for any reason. I didn't look for ovarian</p> <p>2 cancer for the most up-to-date research.</p> <p>3 What I do is if somebody notifies me,</p> <p>4 in this case Ms. Parfitt or her team notified me</p> <p>5 that it had been updated, then I will look at it.</p> <p>6 Q. Okay. So the reason you looked at the</p> <p>7 NCI PDQ is because the lawyers notified you it had</p> <p>8 been updated?</p> <p>9 A. Yes, because they thought I might be</p> <p>10 interested to see what is currently on that site.</p> <p>11 Q. Okay. And if you look at the very, very</p> <p>12 last page of the document, this document was</p> <p>13 updated July 8, 2021. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And if you look at page 13 of 20, you see</p> <p>16 that this document from the NCI lists doctors with</p> <p>17 inadequate evidence of an association risk of</p> <p>18 ovarian, fallopian tube, and primary peritoneal</p> <p>19 cancer; correct?</p> <p>20 A. I just want to clarify that this is not</p> <p>21 an NCI statement, it's an independent board. PDQ</p> <p>22 is an independent group of scientists. So it's not</p> <p>23 an NCI document. It's not policy of NCI. I think</p> <p>24 it's produced on PDQ.</p> <p>25 Q. So there are a couple of things, though,</p>
<p style="text-align: right;">Page 51</p> <p>1 A. Okay.</p> <p>2 Q. When's the first time you saw this</p> <p>3 document at tab 24, Exhibit 5?</p> <p>4 A. I can't recall the exact time, because I</p> <p>5 believe that I looked online for NCI PDQ, but also</p> <p>6 Ms. Parfitt's team provided this as a PDF. So</p> <p>7 that's why I'm hesitating. I can't remember, even</p> <p>8 though this says produced on the 21st, I may have</p> <p>9 looked myself. So I'm not sure exactly when I</p> <p>10 first saw this version of it.</p> <p>11 Q. Okay. Did the document that you produced</p> <p>12 to us, which is -- looks like it was printed on</p> <p>13 August 5, 2021, was that given to you by the</p> <p>14 lawyers?</p> <p>15 A. I believe that this was, but I think that</p> <p>16 I independently looked online, okay?</p> <p>17 Q. And do you regularly check the NCI</p> <p>18 website for information regarding ovarian cancer?</p> <p>19 A. No, I do not.</p> <p>20 Q. Why were you looking online for this</p> <p>21 document?</p> <p>22 A. I believe -- well, first of all, I don't</p> <p>23 look because they're not -- they don't do</p> <p>24 systematic reviews. So it's not an up-to-date</p> <p>25 comprehensive review of issues. So I wouldn't look</p>	<p style="text-align: right;">Page 53</p> <p>1 that are different. And let's make sure we're</p> <p>2 clear. This is not a policy statement of the</p> <p>3 National Cancer Institute according to the document</p> <p>4 itself; correct?</p> <p>5 A. Well, I haven't looked through it to see</p> <p>6 if it talks about document, but I do -- they do</p> <p>7 disclose that -- somewhere -- that it's a separate</p> <p>8 board and it is not an NCI document.</p> <p>9 Q. Okay. Have you looked to see the</p> <p>10 scientists that make up the board that puts</p> <p>11 together the NCI PDQ?</p> <p>12 A. I did look this time. I don't routinely</p> <p>13 look and see who's on the board for all of these</p> <p>14 PDQ productions. They produce things from numbers</p> <p>15 of different cancers.</p> <p>16 Q. And how many board members are employed</p> <p>17 by the National Cancer Institute?</p> <p>18 A. I don't know.</p> <p>19 Q. Are you aware that several of the board</p> <p>20 members work at the NCI?</p> <p>21 A. I don't know.</p> <p>22 MS. PARFITT: Objection.</p> <p>23 BY MS. BROWN:</p> <p>24 Q. This document, which is titled NHI,</p> <p>25 National Cancer Institute -- do you see that on the</p>

<p style="text-align: right;">Page 54</p> <p>1 first page?</p> <p>2 A. They use the logo, but they do later, on</p> <p>3 page 18, say that it's editorially independent of</p> <p>4 NCI.</p> <p>5 Q. The document has the logo NIH National</p> <p>6 Cancer Institute; correct?</p> <p>7 MS. PARFITT: Asked and answered. Go</p> <p>8 ahead, Dr. McTiernan.</p> <p>9 THE WITNESS: It has the logo, yes.</p> <p>10 BY MS. BROWN:</p> <p>11 Q. Okay. And you understand the document is</p> <p>12 accessible from the National Cancer Institute's</p> <p>13 website; right?</p> <p>14 MS. PARFITT: Objection.</p> <p>15 THE WITNESS: I haven't looked for it</p> <p>16 that way. I think I looked -- I Googled NCI PDQ,</p> <p>17 and that's how I got it.</p> <p>18 BY MS. BROWN:</p> <p>19 Q. Did you understand that when you Googled</p> <p>20 it, you gotta go to the NCI's website to get this</p> <p>21 thing?</p> <p>22 A. I'll take your word for it. I did not</p> <p>23 look to see what group it was that I found.</p> <p>24 Q. All right. On page 13 you see factors</p> <p>25 with inadequate evidence of an association with the</p>	<p style="text-align: right;">Page 56</p> <p>1 right? Comments, questions, submit to the NCI;</p> <p>2 right?</p> <p>3 A. Are you talking about the section that</p> <p>4 says "contact us"?</p> <p>5 Q. If you look at page 19 of 20, "any</p> <p>6 comments or questions about the summary content</p> <p>7 should be submitted to cancer.gov through the NCI's</p> <p>8 website." Do you see that?</p> <p>9 A. No. Maybe you can point me --</p> <p>10 Q. Yeah, let me put it up on the -- I'm</p> <p>11 going to share my screen and try and make this</p> <p>12 easier for us.</p> <p>13 So, Doctor, on -- I am on page 19 of</p> <p>14 20 to help orient you. And right -- we're looking</p> <p>15 at a page that talks about this PDQ summary. Do</p> <p>16 you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And in the middle of the page it</p> <p>19 says, "Any comments or questions about this summary</p> <p>20 consent should be submitted to cancer.gov through</p> <p>21 the NCI's website"; right?</p> <p>22 A. I see it now that you're highlighting.</p> <p>23 It was kind of buried there.</p> <p>24 Q. Have you, since the time of your last</p> <p>25 deposition, submitted any comments or questions</p>
<p style="text-align: right;">Page 55</p> <p>1 ovarian, fallopian tube and primary peritoneal</p> <p>2 cancer. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And one of the factors in</p> <p>5 inadequate evidence is listed perineal talc</p> <p>6 exposure; correct?</p> <p>7 A. Yes. And I disagree that that is under</p> <p>8 that classification. And I disagree for other</p> <p>9 things that they classify that way. I think that</p> <p>10 their opinion is not based on systematic reviews</p> <p>11 and full analysis.</p> <p>12 Q. All right. So the very first sentence</p> <p>13 says, "The weight of the evidence does not support</p> <p>14 an association between perineal talc exposure and</p> <p>15 an increased risk of ovarian cancer." And I</p> <p>16 understand you, Doctor, to be saying you disagree;</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And you would agree that ovarian</p> <p>20 cancer is a serious women's health issue; correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you understand that at the very end</p> <p>23 of this document the authors invite people to</p> <p>24 comment, to contact them with any information they</p> <p>25 might want to say about what's in this document;</p>	<p style="text-align: right;">Page 57</p> <p>1 about this summary through the NCI's website?</p> <p>2 A. No, I have not.</p> <p>3 Q. Yet you are of the opinion that talcum</p> <p>4 powder is causing a fatal cancer and you disagree</p> <p>5 with the conclusions in this document that we're</p> <p>6 looking at, Exhibit 5; correct?</p> <p>7 A. You mentioned a fatal cancer. Are you</p> <p>8 saying all cases of ovarian cancer are fatal?</p> <p>9 Q. I think we can agree, Dr. McTiernan, that</p> <p>10 ovarian cancer is a very serious and oftentimes</p> <p>11 fatal disease; correct?</p> <p>12 A. Correct.</p> <p>13 Q. And you are disagreeing with the</p> <p>14 conclusions of this document that there is</p> <p>15 inadequate evidence of perineal talc use causes</p> <p>16 ovarian cancer; correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And you have not made any effort</p> <p>19 to contact or comment -- comment on this document;</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. Have you, Dr. McTiernan, since the time</p> <p>23 of your last deposition, contacted any United</p> <p>24 States public health authority to share your view</p> <p>25 that perineal talc exposure causes ovarian cancer?</p>

<p style="text-align: right;">Page 58</p> <p>1 A. I'm trying to think. I don't -- so          2 contacted -- say it again. Contacted -- better          3 repeat the question again.          4 BY MS. BROWN:          5 Q. Sure. Since the time of your last          6 deposition have you corresponded with, contacted,          7 alerted any public health authority that you          8 are -- United States public health authority that          9 you are of the view that perineal talc exposure          10 causes ovarian cancer?          11 MS. PARFITT: And you're -- with the          12 exception of Health Canada, which you've talked          13 about.          14 BY MS. BROWN:          15 Q. Right. So let me ask the question again,          16 'cause I was pretty clear about the time and the          17 scope.          18 Since the time of your last          19 deposition, have you contacted any United States          20 public health authorities to tell them that you are          21 of the view that perineal talc exposure causes          22 ovarian cancer?          23 A. I can't recall doing that.          24 Q. Have you had -- other than the          25 discussions we spoke about earlier today regarding</p>	<p style="text-align: right;">Page 60</p> <p>1 interpretations.          2 Q. What's her name?          3 A. Concerning the association of talcum          4 powder product use and ovarian cancer.          5 Q. Okay. And what's the name of this          6 program chair?          7 A. So it's Kathy Malone, M-A-L-O-N-E.          8 Q. And what was the nature of your          9 statements to Dr. or Ms. Malone?          10 A. I don't believe I made statements to her.          11 I believe she was following up on the talk.          12 Q. Have you requested the opportunity to          13 give any presentations about your opinions that          14 talc causes ovarian cancer from any of the          15 institutions you're affiliated with?          16 A. No, I have not. Not other than that one.          17 Q. In your correspondence with your program          18 chair, did you ask for any opportunities to spread          19 the word that you believe talcum powder is causing          20 ovarian cancer?          21 A. I don't believe I have.          22 Q. Have you done anything, Dr. McTiernan, at          23 all since your last deposition to get the word out          24 that you believe talcum powder causes ovarian          25 cancer?</p>
<p style="text-align: right;">Page 59</p> <p>1 your congressional testimony, have you had          2 discussions with anyone at all, other than the          3 lawyers, about talcum powder and your belief that          4 it causes ovarian cancer since the time of your          5 last deposition?          6 MS. PARFITT: Objection.          7 THE WITNESS: I believe the -- that          8 I -- when I talked to the -- my department          9 epidemiologist -- sorry -- the division of public          10 health, when I gave that talk, I believe I did          11 there talk to that group about ovarian cancer and          12 talcum powder product use. I believe there was          13 follow up with my own program chair as well with          14 another cancer epidemiologist.          15 BY MS. BROWN:          16 Q. Are you recalling discussions with your          17 program chair since the time of your last          18 deposition about your opinions regarding talcum          19 powder?          20 A. It would have been. It was after that          21 talk that I gave for my program.          22 Q. And tell me what you recall about that          23 discussion.          24 A. It was brief. I believe it was by          25 e-mail. And I believe she said she agreed with my</p>	<p style="text-align: right;">Page 61</p> <p>1 MS. PARFITT: Objection to the extent          2 it's in addition to the comments that you have made          3 to Ms. Brown about your activities.          4 THE WITNESS: I gave comment for a press          5 release -- and we provided that as well, the press          6 release -- on the association of talcum powder          7 product use and ovarian cancer. So that's in          8 your -- in the materials we released. And          9 it's -- I think it was -- it was published in one          10 or maybe more public venues.          11 BY MS. BROWN:          12 Q. And what you're referring to,          13 Dr. McTiernan, is a Beasley Allen law firm press          14 release; is that right?          15 MS. PARFITT: Objection, mischaracterizes          16 the press release.          17 BY MS. BROWN:          18 Q. Is that the one you're talking about?          19 We'll take a look at it in a sec. I just want to          20 make sure we're on the same page.          21 A. Yes.          22 Q. Okay.          23 A. Well, I think that what we provided is          24 the actual media. I don't think it's actually a          25 press release what we provided, but I'd to have to</p>

<p style="text-align: right;">Page 62</p> <p>1 look at that again.</p> <p>2 Q. Okay. We'll take a look at that in one</p> <p>3 sec. Other than the press release that says the</p> <p>4 law firm name Beasley Allen on it, have you done</p> <p>5 any other -- have you engaged in any other media to</p> <p>6 get the word out that you believe talc causes</p> <p>7 ovarian cancer?</p> <p>8 MS. PARFITT: Objection to the</p> <p>9 characterization of the PRN news wire. You may</p> <p>10 answer, Dr. McTiernan.</p> <p>11 THE WITNESS: I'm trying to recall. I</p> <p>12 can't recall. I have answered press media on this</p> <p>13 issue, but I don't think the dates were since the</p> <p>14 last deposition. I think they preceded it.</p> <p>15 BY MS. BROWN:</p> <p>16 Q. Do you think it's important,</p> <p>17 Dr. McTiernan, to sort of spread the word or sound</p> <p>18 the alarm that you believe talcum powder is causing</p> <p>19 ovarian cancer?</p> <p>20 MS. PARFITT: Objection, argumentative.</p> <p>21 THE WITNESS: I believe that when I</p> <p>22 talked to the US Congress about my opinion, that</p> <p>23 was quite a lot of public exposure and it was --</p> <p>24 there was a report available. My statement was</p> <p>25 available. It was televised and -- widely</p>	<p style="text-align: right;">Page 64</p> <p>1 MS. BROWN: No, you're totally right,</p> <p>2 Michelle. We -- and Doctor, I apologize. We've</p> <p>3 been going over an hour. So this would be a great</p> <p>4 time, if it works for everyone, to take a</p> <p>5 ten-minute break.</p> <p>6 MS. PARFITT: That would be great. And</p> <p>7 I'm going to adjust some cameras while we're there.</p> <p>8 So I'll let you go on mute, and we'll get back on.</p> <p>9 MS. BROWN: Okay. Thanks very much.</p> <p>10 (Break taken.)</p> <p>11 BY MS. BROWN:</p> <p>12 Q. Welcome back, Dr. McTiernan. As we</p> <p>13 discussed off the record, we'll try and go another</p> <p>14 hour and take another break. And please let me</p> <p>15 know if you need a break before then.</p> <p>16 A. Okay.</p> <p>17 Q. What I'd like to do now, Dr. McTiernan,</p> <p>18 is talk to you about some of the invoices that you</p> <p>19 produced to us prior to the deposition. And what</p> <p>20 I'll mark separately as Exhibit 6 and 7 is what</p> <p>21 appears as tab 14 and 15 of your binders of</p> <p>22 documents that you produced in advance of this</p> <p>23 deposition. And I'll also -- I'll give you a</p> <p>24 chance to get there.</p> <p>25 So Dr. McTiernan, I want to start with</p>
<p style="text-align: right;">Page 63</p> <p>1 televised. So I think that that's pretty much</p> <p>2 making a very public statement of my opinion.</p> <p>3 BY MS. BROWN:</p> <p>4 Q. Okay. And so my question was just do you</p> <p>5 think it's important -- do you think it's important</p> <p>6 to make your opinion known publicly?</p> <p>7 A. I believe that what I did was important,</p> <p>8 yes.</p> <p>9 Q. And I understand representatives from</p> <p>10 Congress contacted you about that appearance;</p> <p>11 correct?</p> <p>12 A. It was a staffer for the chair of that</p> <p>13 subcommittee.</p> <p>14 Q. Okay. And so what I'm interested in is</p> <p>15 have you, of your own volition and motivation, done</p> <p>16 anything to get the word out about your opinions in</p> <p>17 this litigation?</p> <p>18 MS. PARFITT: Objection, form.</p> <p>19 THE WITNESS: So you're talking about</p> <p>20 whether I have published? I have -- I don't put</p> <p>21 out press releases for myself. I do help if others</p> <p>22 ask for help in press releases, whether it's from</p> <p>23 my institution or other organizations.</p> <p>24 MS. PARFITT: Alli, I don't want to</p> <p>25 interrupt --</p>	<p style="text-align: right;">Page 65</p> <p>1 Exhibit 6, which appears to be some invoices. The</p> <p>2 cover letter is dated October 26, 2019. Do you see</p> <p>3 that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And I'm going to share my screen</p> <p>6 too in case that makes it easier for you, rather</p> <p>7 than having to switch back and forth. So this is</p> <p>8 an invoice since your last deposition submitted to</p> <p>9 Ms. Parfitt. And this is, I guess, your letterhead</p> <p>10 up here, Anne McTiernan, MD, PhD; right?</p> <p>11 A. Yes.</p> <p>12 Q. Do you currently hold an active medical</p> <p>13 license?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Okay. Do you treat patients?</p> <p>16 A. No, I don't.</p> <p>17 Q. Okay. Since the time of your last</p> <p>18 deposition you haven't treated any patients; is</p> <p>19 that fair?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. Where do you currently have an</p> <p>22 active medical license?</p> <p>23 A. Washington state.</p> <p>24 Q. Okay. Anywhere else?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 66</p> <p>1 Q. And this title, internal medicine, cancer  2 epidemiology and women's health, where does that  3 come from?  4 A. Those are the topics I cover for  5 consulting.  6 Q. This -- is this a title that you inserted  7 here?  8 A. It's not a title, it's -- these are the  9 things that I cover. It's not a company name.  10 It's -- these are the issues that I'll cover in  11 consulting.  12 Q. Understood. And is this your home  13 address here?  14 A. Yes.  15 Q. Okay. And you say you're submitting this  16 invoice to Ms. Parfitt for the period  17 September 29th to October 26th, and you reference  18 that it's for meeting --  19 A. Hold on. You said September 29th?  20 Which --  21 Q. This is what we've marked as Exhibit 6.  22 It's part of the materials you produced in advance  23 of the deposition. And it can be found in your  24 binders at tab 14, in the binder titled documents  25 produced by plaintiff. And I also have it up on</p>	<p style="text-align: right;">Page 68</p> <p>1 A. I believe it was -- oh, this is -- this  2 was for -- for doing research on the causation.  3 But I believe it's -- these were different sources  4 of funds. So that's -- I'm a little confused with  5 why that ended up in your packet versus what's here  6 in what I have.  7 So I believe it was a way to  8 differentiate it from two different sources of  9 funds, one being MDL, one being another case.  10 Q. I understand. This special research that  11 you did was for something other than the MDL; is  12 that right?  13 A. I believe that's -- yeah, that's the term  14 we used.  15 Q. Okay. Did you -- are you the person who  16 came up with the term special research?  17 A. I don't think so. I think Ms. Parfitt  18 came up with that.  19 Q. Okay. And in terms of the substance of  20 what this special research was, what did you do?  21 MS. PARFITT: Objection to the extent  22 it's proprietary with regard to a matter,  23 Dr. McTiernan, for which you've yet been disclosed.  24 BY MS. BROWN:  25 Q. And just to clear it up, this is work you</p>
<p style="text-align: right;">Page 67</p> <p>1 the screen if that's helpful. And my question,  2 Dr. McTiernan, is --  3 A. Hold it. Ms. Brown, I'm still not able  4 to find it. The one that I have in this binder, it  5 says July 28th through October 12, 2019.  6 MS. PARFITT: Alli, mine does as well.  7 MS. BROWN: Okay. Well, that must be a  8 printing issue. These are the invoices that you  9 produced to us.  10 BY MS. BROWN:  11 Q. And it sounds like, Dr. McTiernan, there  12 might have been some printing. So what I'll do is  13 give you as much time as you need and just ask if  14 you could look at the screen for the questions  15 since it doesn't seem like it printed in your  16 binder.  17 A. I'm looking at the screen.  18 Q. Okay. Great. So on Exhibit 6, my  19 question for you, your first paragraph here says  20 that you're submitting invoices for work including  21 e-mails, literature review, document review, and  22 for something called special research. Do you see  23 that?  24 A. Yes.  25 Q. What is special research?</p>	<p style="text-align: right;">Page 69</p> <p>1 did in September 29, 2019 to October 26, 2019. Can  2 you describe to me what the special research was?  3 MS. PARFITT: Again, objection. Just  4 caution you, Dr. McTiernan, if it has to do with  5 something in a matter where you have not been  6 disclosed as an expert.  7 THE WITNESS: Okay. This was further  8 research in relation to -- it was not a  9 case-specific research, it was more considering  10 issues of the science of epidemiology, general  11 causation. That may have had special reference  12 to -- to that particular. So it's not MDL. And I  13 think today we're being -- we're reviewing for MDL;  14 is that correct?  15 BY MS. BROWN:  16 Q. Well, actually we're reviewing all the  17 stuff you've produced since your last deposition  18 and all of the work that relates to that. So was  19 this special research regarding clear cell cancer?  20 A. I can't recall. I would have to go and  21 review that case again to see, or review the exact  22 things that I was looking at.  23 Q. And if you go to the second page,  24 Dr. McTiernan, it looks like you charge -- first of  25 all, your hourly rate at the time was \$450; right?</p>



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1 A. Yes.  
2 Q. And that has since increased to 500; is  
3 that right?  
4 A. Yes.  
5 Q. Okay. And it looks like here you have  
6 the total of this invoice \$4,500; right?  
7 A. Yes.  
8 Q. And the only thing on here is special  
9 research and some lunch meetings; right?  
10 A. Looks like one meeting, yes.  
11 Q. Okay. So how do you know what you did  
12 for the \$4,500? Do you have other records that  
13 would let anybody know what you did?  
14 A. I would need to review what I was looking  
15 at at that time.  
16 Q. And how would you do that?  
17 A. I could look back in my computer and see  
18 what -- what -- what sort of things I was looking  
19 at or going through.  
20 Q. Do you keep some kind of a document that  
21 would allow you to correspond what you did on the  
22 days referenced in this invoice?  
23 A. No, I don't.  
24 Q. So how could you go back and try and  
25 figure out what special research totaling ten hours

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1 you did that resulted in an invoice for \$4,500?  
2 A. I do these by day. So at the end of the  
3 day, if I've spent an hour working on these issues,  
4 then I would insert it into my spreadsheet.  
5 Q. Do you have a spreadsheet that includes  
6 details of what -- what you do that allows you to  
7 generate those invoices?  
8 A. It's no different than that. I abstract  
9 from that directly into this table.  
10 Q. Okay. Are there more details contained  
11 in your spreadsheet than we're seeing right here?  
12 A. No.  
13 MS. PARFITT: Objection, asked and  
14 answered.  
15 BY MS. BROWN:  
16 Q. So sitting here today, you're not aware  
17 of anything more than what you already told us that  
18 resulted in a \$4,500 payment for special research?  
19 A. That's correct.  
20 Q. And flipping to the next page of this  
21 document, which is a letter dated December 19,  
22 2019, I have a couple of questions about some of  
23 your charges here on the next page.  
24 You charge the lawyers for travel  
25 time; is that right?

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1 A. Yes.  
2 Q. And you charge them at a rate of \$225 per  
3 hour of travel?  
4 A. Yes.  
5 Q. And are you -- do you happen to be  
6 working during that time or is it any kind of  
7 travel in connection with your expert witness work?  
8 A. It's travel time.  
9 Q. Okay. So are you working during the  
10 travel time or not?  
11 A. If I only charged that, then I would not  
12 be doing work for -- for this case.  
13 Q. Okay. If you're traveling and doing  
14 work, you would charge your \$500 an hour rate; is  
15 that fair?  
16 A. Not then. That was 450.  
17 Q. Okay. At the time of this invoice, if  
18 you had been, for example, reading something on a  
19 plane, you would charge \$450 an hour; correct?  
20 A. That's correct.  
21 Q. But if you're just sitting on the plane  
22 reading the newspaper, you charge \$225 an hour;  
23 right?  
24 A. That's correct.  
25 Q. Okay. Now, a lot of the entries on this

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1 invoice use the term "review documents." Do you  
2 see that kind of all over this document?  
3 A. Yes.  
4 Q. What documents are those?  
5 A. If this was travel to a deposition or to  
6 testimony, then I would be reviewing the documents  
7 that -- that I had looked at previously, or the  
8 documents that are referenced in my report.  
9 the -- any documents that were provided for me by  
10 Ms. Parfitt's firm. So quite varied, but I would  
11 review several times the epidemiologic studies that  
12 I was reporting on.  
13 Q. This invoice that we're looking at totals  
14 \$75,000. Do you see that?  
15 A. Yes.  
16 Q. Is there any way for anyone to know what  
17 documents you reviewed for \$75,000 here?  
18 MS. PARFITT: Objection.  
19 THE WITNESS: I would have to see -- I  
20 would have to look back and see exactly which trial  
21 it was, which deposition it was, and then look back  
22 and see what -- what documents there were for  
23 those.  
24 BY MS. BROWN:  
25 Q. Okay. Do you have a list or some kind of



<p style="text-align: right;">Page 74</p> <p>1 writing or documents that would allow you to figure                  2 out what all of these entries titled "review                  3 documents" refer to?                  4 A. That would be primarily the references                  5 from my expert report.                  6 Q. When you review documents like you have                  7 noted in this invoice, do you review them                  8 electronically or in hard copy?                  9 A. Either. If I'm traveling, then they --                  10 many of them may be electronic, but anything could                  11 be paper as well.                  12 Q. Okay.                  13 A. These are the documents that I would have                  14 testified at that time about the documents that I                  15 would have had the deposition about.                  16 Q. Is it -- is it your idea to submit                  17 invoices like the one we're looking at with no                  18 description other than "review documents"?                  19 MS. PARFITT: Objection.                  20 THE WITNESS: Was it my idea?                  21 BY MS. BROWN:                  22 Q. Yes.                  23 A. Yes. And I -- yes.                  24 Q. Okay. Have you ever considered including                  25 more detail in your invoices so the people paying</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Okay. On January 25, 2019 you submitted                  2 a bill for over \$1,000 for a call. Do you see                  3 that?                  4 A. Yes.                  5 Q. Do you have any idea what the call -- the                  6 \$1000 call from January 25, 2019 was about?                  7 MS. PARFITT: And again, you're referring                  8 to the two-and-a-half hour call? Is that what                  9 you're talking about on January --                  10 MS. BROWN: Ms. Parfitt, is that really                  11 fair? Come on now. Let's -- let's -- I understand                  12 you want to contextualize. Your witness is doing                  13 just fine. Let her hold her own and please conform                  14 your objections to the rules.                  15 BY MS. BROWN:                  16 Q. Dr. McTiernan, do you have any idea what                  17 the call from January 25, 2019 was about?                  18 A. These conference calls are all with                  19 Ms. Parfitt and her team, or Ms. Parfitt alone.                  20 Given the time --                  21 MS. PARFITT: I would object. And Alli,                  22 I obviously would object other than a general                  23 reference, I mean, as to our specific --                  24 MS. BROWN: Understood.                  25 MS. PARFITT: -- Dr. McTiernan is not to</p>
<p style="text-align: right;">Page 75</p> <p>1 you know what you were doing?                  2 MS. PARFITT: Objection, argumentative.                  3 THE WITNESS: If they ask me to, I will.                  4 BY MS. BROWN:                  5 Q. Okay. Let's take a look at what is the                  6 second set of invoices that were produced that we                  7 marked as Exhibit 7, which should be tab 15 in that                  8 binder, Dr. McTiernan.                  9 Though I appreciate we may have some                  10 difficulty with the invoice printing. This one                  11 appears to start -- it's a packet of invoices, and                  12 it appears to start with a cover letter dated                  13 February 24, 2018. Do you see that?                  14 A. This was the one submitted before                  15 my -- before when I had those -- the last                  16 deposition?                  17 Q. I don't know. This is the stuff we got                  18 from you in advance of the deposition.                  19 A. Okay. I have this.                  20 Q. Okay. And one of the things I want to                  21 ask you about, if you go to the letter of                  22 February 5, 2019, do you see that letter somewhere                  23 in the documents you have there? And I have it up                  24 on the screen if that's helpful.                  25 A. Yes.</p>	<p style="text-align: right;">Page 77</p> <p>1 go into that, nor would that be proper to make that                  2 inquiry.                  3 MS. BROWN: Yes.                  4 MS. PARFITT: So Dr. McTiernan, you can                  5 reference it was a call. If you recall with whom,                  6 that's appropriate.                  7 THE WITNESS: Okay. I'll stop there                  8 then.                  9 BY MS. BROWN:                  10 Q. Okay. And that's a fair objection. Your                  11 recollection is this call from January 25, 2019 was                  12 a call with lawyers; is that fair?                  13 A. Yes.                  14 Q. Okay. And in terms of -- setting aside                  15 any discussions you might have had with lawyers, in                  16 terms of any addition details about entries like                  17 this one that just say "call," do you have any                  18 documents or any source of finding out what took                  19 place on some of these days that are referenced in                  20 your invoices?                  21 A. So you're not talking about the call,                  22 you're talking about the -- the other dates?                  23 Q. Well, I mean, there are other entries                  24 that say things like "call" in your invoices. And                  25 I want to know is there a source, a log, a diary,</p>

<p style="text-align: right;">Page 78</p> <p>1 something that you maintained that contained                  2 additional information about the work you were                  3 doing on the case?                  4 MS. PARFITT: Objection.                  5 THE WITNESS: If it says "review                  6 documents," these are documents that I have used                  7 and referenced in my expert report. If it says                  8 "call," it's a call with Ms. Parfitt and other                  9 lawyers or Ms. Parfitt alone. That's it.                  10 BY MS. BROWN:                  11 Q. Do you, since the time of your last                  12 deposition, submit an invoice for time preparing                  13 for your testimony to Congress?                  14 A. No, I did not submit an invoice for                  15 preparation for Congress.                  16 Q. Okay. The lawyers reimbursed your travel                  17 expenses to testify in front of Congress; correct?                  18 A. Yes.                  19 Q. So if we turn to the next page, this is                  20 actually a request for reimbursement. This is some                  21 supplemental information that you provided                  22 regarding your trip from Seattle to Washington,                  23 D.C.; correct?                  24 A. Yes.                  25 Q. Okay. The lawyers paid for you to travel</p>	<p style="text-align: right;">Page 80</p> <p>1 BY MS. BROWN:                  2 Q. Right, Dr. McTiernan? I mean, the                  3 truthful answer to that question is that the                  4 lawyers paid for you to fly first class to testify;                  5 right?                  6 MS. PARFITT: Objection. Same objection.                  7 THE WITNESS: I don't have the wording of                  8 what -- what was asked at the trial. I thought                  9 that it was -- I was asked about payment, and I                  10 thought that there was a follow-up, if not then, at                  11 least another time, about expenses.                  12 BY MS. BROWN:                  13 Q. Did the lawyers pay for any other                  14 expenses connected to your congressional testimony?                  15 A. I'm trying to recall. They may have paid                  16 for hotel, but -- I don't recall.                  17 Q. Do you recall what hotel you stayed at?                  18 A. I don't.                  19 Q. Okay. When you travel for your work in                  20 the talcum powder litigation, do you always fly                  21 first class?                  22 A. I do. I do for other work purposes as                  23 well. My institution allows that for medical                  24 reasons.                  25 Q. Your general travel policy is that you</p>
<p style="text-align: right;">Page 79</p> <p>1 from Seattle to Washington in connection with the                  2 congressional testimony; correct?                  3 A. They paid for flight and the Seattle                  4 taxi.                  5 Q. And in fact, they paid for you to fly                  6 first class from Seattle to Washington; correct?                  7 A. Yes.                  8 Q. And you were asked in the past about                  9 whether or not you were compensated for your                  10 testimony in front of Congress; right?                  11 A. I believe I was asked at a trial, yes.                  12 Q. And you were asked were you paid by the                  13 plaintiff's counsel to show up for Congress; right?                  14 Do you remember that question?                  15 A. I don't remember the exact question.                  16 Q. And you remember your answer was no;                  17 right?                  18 A. Yes. I believe there was a follow-up                  19 asking about expenses.                  20 Q. Well, there wasn't. I mean, the truth                  21 is, you were reimbursed to fly first class from the                  22 west coast to the east coast for this appearance;                  23 right?                  24 MS. PARFITT: Objection, misstates her                  25 testimony. Mischaracterizes testimony.</p>	<p style="text-align: right;">Page 81</p> <p>1 always travel first class; is that fair?                  2 A. Yes.                  3 Q. And you submit reimbursement to the                  4 lawyers for all of your first class travel; is that                  5 correct?                  6 A. If it's for work for them.                  7 Q. Okay.                  8 A. With the exception of this one instance                  9 where I did ask them if they would pay for my                  10 consult reporting.                  11 Q. Okay. Did you ask them to pay for                  12 anything else in addition to your flight?                  13 A. Just the other expenses, the cab, and I                  14 think they covered the hotel.                  15 Q. Okay. And do you have a receipt for that                  16 hotel?                  17 A. I do not.                  18 Q. Was it charged directly to the lawyers?                  19 A. If they covered it, it would have been.                  20 I don't have a receipt, so that must have been how                  21 that one -- how it worked.                  22 Q. When you traveled to DC for work as an                  23 expert witness in the talcum powder litigation, is                  24 there a particular hotel that has a charge account                  25 directly to the lawyers where you normally stay?</p>

<p style="text-align: right;">Page 82</p> <p>1 MS. PARFITT: Objection.</p> <p>2 THE WITNESS: I've never traveled to DC</p> <p>3 to work with -- on this expert report or as an</p> <p>4 expert witness. I've traveled to New Jersey, and</p> <p>5 then for another case I traveled to Missouri.</p> <p>6 BY MS. BROWN:</p> <p>7 Q. And so the next page, Dr. McTiernan,</p> <p>8 would include some of your cab transportation in</p> <p>9 connection with your congressional testimony; is</p> <p>10 that right?</p> <p>11 A. I'm not sure what you're looking at,</p> <p>12 but --</p> <p>13 Q. So the next page right after the plane</p> <p>14 ticket, the next page of Exhibit 7 is an invoice</p> <p>15 from City Cars, it looks like located in</p> <p>16 Washington, picking you up. Is that your home,</p> <p>17 7755 57th Avenue?</p> <p>18 A. Yes. So that's direct trip cab fare</p> <p>19 within Seattle.</p> <p>20 Q. Okay. And that also is something that</p> <p>21 was reimbursed by the lawyers; correct.</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Other than, I guess, food, hotel,</p> <p>24 cab, flight, did the lawyers provide any other</p> <p>25 financial assistance in connection with your</p>	<p style="text-align: right;">Page 84</p> <p>1 the next time that I had to report.</p> <p>2 Q. Okay.</p> <p>3 A. I -- go ahead.</p> <p>4 Q. No, no. Please, go ahead.</p> <p>5 A. No. I have nothing to add. Sorry.</p> <p>6 Q. Okay. Do you recall any follow up when</p> <p>7 you made your institution aware that the lawyers</p> <p>8 had reimbursed you to travel for Congress?</p> <p>9 A. I don't recall anything. I recall that</p> <p>10 my institution said that they would not be able to</p> <p>11 pay for my travel. I do recall that.</p> <p>12 Q. Have you had any follow-up communications</p> <p>13 with any congressional staffer or anyone associated</p> <p>14 with Congress since the time of your testimony?</p> <p>15 A. The same staffer who contacted me to</p> <p>16 begin with, William Cunningham, did send an e-mail</p> <p>17 afterwards -- we provided them. I don't have the</p> <p>18 date in mind -- asking to talk with me.</p> <p>19 Q. Okay. And why don't we mark that as</p> <p>20 Exhibit 8. It is tab three in the binder of</p> <p>21 documents that you provided to us in advance of the</p> <p>22 deposition. Is this what I'm showing on the</p> <p>23 screen, the e-mail from Monday October 28, 2019, is</p> <p>24 that what you're referring to?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 83</p> <p>1 congressional testimony?</p> <p>2 A. No.</p> <p>3 Q. Did the lawyers approve or edit or review</p> <p>4 your comments to Congress before you made them?</p> <p>5 A. I believe that I asked Ms. Parfitt if she</p> <p>6 had any -- if she could review the comments. I</p> <p>7 don't believe she had input, but I can't recall</p> <p>8 most of that -- or otherwise that work was done</p> <p>9 with our -- my institution's vice president of</p> <p>10 government affairs.</p> <p>11 (Interruption by the reporter.)</p> <p>12 THE WITNESS: So that was probably me</p> <p>13 mumbling. I apologize. I'll try harder.</p> <p>14 BY MS. BROWN:</p> <p>15 Q. Did you, Dr. McTiernan, put the vice</p> <p>16 president from your institution in touch with the</p> <p>17 lawyers who reimbursed your travel expenses at all</p> <p>18 in connection with the testimony?</p> <p>19 A. No, not at all.</p> <p>20 Q. Did your institution -- was your</p> <p>21 institution aware that the lawyers were reimbursing</p> <p>22 your travel to Congress?</p> <p>23 A. Yes. I think so.</p> <p>24 Q. Did you have to get approval for that?</p> <p>25 A. I believe that I put it in to accounting</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. And is it your testimony that prior to --</p> <p>2 strike that.</p> <p>3 It looks like Mr. Cunningham was</p> <p>4 following up on an e-mail he had sent to you from</p> <p>5 May 5, 2019. Do you see that down at the bottom?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And if we just take a look back at</p> <p>8 the chain, on May 5th you actually heard from this</p> <p>9 staffer, and he said, "Hi, Anne. I hope you're</p> <p>10 well. I recall in our e-mail exchanges in March</p> <p>11 you sending me a handful of findings, summaries,</p> <p>12 reports from Health Canada." What's that?</p> <p>13 A. What I recall sending him was what was</p> <p>14 available on the Health Canada website. So there</p> <p>15 were -- there was some things that they had drafted</p> <p>16 for public consumption. I don't -- I don't have</p> <p>17 those in front of me right now, so I can't recall</p> <p>18 exactly what they said. I don't know if those were</p> <p>19 updated with the screening update. I didn't go</p> <p>20 look them up.</p> <p>21 But also their draft screening</p> <p>22 document, which we previously provided. And so I</p> <p>23 believe I sent him those and on his request of any</p> <p>24 additional documents I might have.</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">Page 86</p> <p>1 A. But these were publicly available from  2 the Canadian website.</p> <p>3 Q. Okay. And Mr. Cunningham, in May of  4 2019, says he's trying to get additional insight  5 into what next steps they, Health Canada, have  6 taken or plan to take; right?</p> <p>7 A. Yes.</p> <p>8 Q. And he asks anything you can share or a  9 contact that would be privy, question mark; right?</p> <p>10 A. Yes.</p> <p>11 Q. And you respond looks like on Sunday  12 the 5th, that same day; right?</p> <p>13 A. Yes.</p> <p>14 Q. And your signature block has a website,  15 Anne McTiernan.com. Do you have your own website?</p> <p>16 A. Yes. It's a personal website.</p> <p>17 Q. What is the purpose of your personal  18 website?</p> <p>19 MS. PARFITT: Objection.</p> <p>20 THE WITNESS: Oh. Creative writing. I  21 had a blog at one point, which I don't add to  22 anymore. I put things about the books I've  23 published.</p> <p>24 BY MS. BROWN:</p> <p>25 Q. Have you ever put any information about</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. And your signature block here lists you,  2 of course, MD, PhD, author of Starved, a nutrition  3 doctor's journey from MD to full. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you consider yourself a nutrition  6 doctor?</p> <p>7 A. Yes.</p> <p>8 MS. PARFITT: Objection. These questions  9 have been asked prior.</p> <p>10 BY MS. BROWN:</p> <p>11 Q. And does your -- does the signature block  12 you use today look the same as the one in this  13 document?</p> <p>14 A. No, I change them once in a while. That  15 one may have been from a cell phone. This doesn't  16 look like the one that I usually use for my e-mail.  17 But what I have now is different from these, yes.</p> <p>18 Q. Do you know what your signature block  19 says today?</p> <p>20 A. I'd have to open it up to see.</p> <p>21 Q. And then it looks like the next  22 correspondence in this chain is from Mr. Cunningham  23 to you again, this time dated Monday, October 28,  24 2019. Do you see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 87</p> <p>1 your opinions regarding talc and ovarian cancer on  2 your website?</p> <p>3 A. No.</p> <p>4 Q. You respond and you say, "Hi Will. I  5 forwarded you the contact info for a person from  6 Health Canada who contacted me. They have not yet  7 asked me to do anything specific. Anne." Do you  8 see that?</p> <p>9 A. Yes.</p> <p>10 Q. Were you aware at the time you provided  11 this contact information that the public comment  12 period had ended regarding Health Canada's  13 assessment?</p> <p>14 A. He wasn't asking about public comment, he  15 was asking about who to contact, I believe, to see  16 what they are doing. He wasn't asking for making  17 comment.</p> <p>18 Q. Yeah, my question was just when you  19 provided this information, did you know that the  20 public comment period was closed?</p> <p>21 A. I don't think that I put the two and two  22 together. It was -- he wanted a name, and I said I  23 would send it. So I must have sent -- I only had  24 one name, so I must have sent him the name and  25 e-mail address of that one person who contacted me.</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Did you have any correspondence with  2 Mr. Cunningham or any other staffers in between  3 May 5, 2019 and October 28, 2019?</p> <p>4 A. No.</p> <p>5 Q. Okay. He says, "Hi, Anne. I hope you're  6 well. I'm sure you've heard the news about the  7 FDA's recall announcement earlier this month after  8 it discovered asbestos in J and J's powder. I'm  9 under the impression FDA continues to use the J41  10 testing method, but wanted to make sure that  11 assumption was correct. It would be great to chat  12 and get a sense of your thoughts on this recent  13 revelation. Are you free this week?"</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Did you -- first of all, what is  17 the J41 testing method?</p> <p>18 MS. PARFITT: Objection. This type of  19 inquiry was made at the prior deposition, and I  20 believe that Dr. McTiernan had testified that she  21 was an epidemiologist and was not an expert on  22 fibrous testing.</p> <p>23 MS. BROWN: Yeah. And to be fair,  24 Michelle, it couldn't have been made because this  25 e-mail comes both after her MDL deposition as well</p>

<p style="text-align: right;">Page 90</p> <p>1 as after her MDL testimony. So the e-mail --</p> <p>2 MS. PARFITT: The e-mail does, Alli. The</p> <p>3 content doesn't.</p> <p>4 MS. BROWN: Well, I'm asking about the</p> <p>5 e-mail that came after her --</p> <p>6 MS. PARFITT: I'm sorry, Alli. I thought</p> <p>7 you were asking her knowledge about the J41 testing</p> <p>8 method.</p> <p>9 MS. BROWN: Sure.</p> <p>10 BY MS. BROWN:</p> <p>11 Q. Well, I want to know, as referenced in</p> <p>12 this e-mail that came to you on October 28, 2019,</p> <p>13 you knew what he was talking about when he</p> <p>14 referenced the J41 testing method?</p> <p>15 A. I do not know what J41 testing is.</p> <p>16 Q. Okay. He says "it would be great to</p> <p>17 chat." Did you ever chat with Mr. Cunningham after</p> <p>18 this e-mail?</p> <p>19 A. Yes.</p> <p>20 Q. And tell me about that.</p> <p>21 A. I believe it was that week. And it was</p> <p>22 an extremely short call. He was on the call, and</p> <p>23 one other person. I don't recall their name. And</p> <p>24 his questions were all about the FDA and testing.</p> <p>25 And I said I just -- I couldn't answer. I didn't</p>	<p style="text-align: right;">Page 92</p> <p>1 for something, either more copies, additional</p> <p>2 copies or, frankly, even your question, whether or</p> <p>3 not there was a response in writing to</p> <p>4 Mr. Cunningham.</p> <p>5 MS. BROWN: I see. So Michelle, your</p> <p>6 representation is this is a resend as you guys were</p> <p>7 collecting these documents?</p> <p>8 MS. PARFITT: Exactly. And frankly, I</p> <p>9 can't remember whether it was -- you know, we asked</p> <p>10 the same question you did and we just asked her to</p> <p>11 send all the communications.</p> <p>12 MS. BROWN: Okay. Fair enough, if that's</p> <p>13 the representation.</p> <p>14 BY MS. BROWN:</p> <p>15 Q. Had you ever spoken to Mr. Cunningham on</p> <p>16 the phone prior to the follow-up to this e-mail</p> <p>17 here from October of 2019?</p> <p>18 A. Prior to this?</p> <p>19 Q. Yes.</p> <p>20 A. We did speak by phone several times when</p> <p>21 he was asking me first to give testimony, then when</p> <p>22 he was telling me about when the testimony would</p> <p>23 be, what to expect, and then who -- when to arrive,</p> <p>24 who to contact, though -- and then, you know, how</p> <p>25 long I would have. All of the logistics we did</p>
<p style="text-align: right;">Page 91</p> <p>1 have that information. He asked if I knew of</p> <p>2 anybody that might know. I believe I gave him the</p> <p>3 name from somebody I had learned about in</p> <p>4 litigation, Dr. Longo.</p> <p>5 But I -- and I said that --</p> <p>6 (Interruption by the reporter.)</p> <p>7 THE WITNESS: Sorry. I said there was</p> <p>8 publicly available information about these experts,</p> <p>9 but that I had no information I could give him.</p> <p>10 BY MS. BROWN:</p> <p>11 Q. Did you respond to Mr. Cunningham's</p> <p>12 e-mail?</p> <p>13 A. I don't recall. I didn't see another</p> <p>14 e-mail, so I'm not sure. If I responded it would</p> <p>15 be only about the call, or if I just called his</p> <p>16 number. I don't remember. But we did speak that</p> <p>17 week.</p> <p>18 Q. What's all this up here that's blacked</p> <p>19 out?</p> <p>20 A. I don't know.</p> <p>21 Q. Do you think that it might be your e-mail</p> <p>22 response?</p> <p>23 MS. PARFITT: Objection. Alli, I will</p> <p>24 represent that that's probably a communication from</p> <p>25 Ashcraft &amp; Gerel to Dr. McTiernan asking that --</p>	<p style="text-align: right;">Page 93</p> <p>1 speak by phone with him.</p> <p>2 Q. Is there a reason that rather than reply</p> <p>3 to Mr. Cunningham by e-mail you would have picked</p> <p>4 up the phone and called him?</p> <p>5 A. That's what I don't recall. I didn't see</p> <p>6 another e-mail of my own, but -- and so that's why</p> <p>7 I don't recall how it happened. I knew -- I do</p> <p>8 remember the call being extremely brief, that once</p> <p>9 I was able to -- once I told him I was not an</p> <p>10 expert in this area and couldn't give him any</p> <p>11 information, pretty much the call ended. He</p> <p>12 wasn't -- he didn't have anything else he wanted to</p> <p>13 ask me.</p> <p>14 Q. Okay. Did you call Mr. Cunningham to set</p> <p>15 up a call to discuss this, or you just called him</p> <p>16 once and said basically, I don't know about this?</p> <p>17 A. I don't recall. I don't remember.</p> <p>18 Q. And in terms of how this e-mail got</p> <p>19 produced to us, did you physically go through your</p> <p>20 e-mail and try and collect any correspondence with</p> <p>21 Mr. Cunningham or Congress?</p> <p>22 A. Yes.</p> <p>23 Q. And do you sometimes delete your e-mails?</p> <p>24 Is it possible you deleted your response to</p> <p>25 Mr. Cunningham?</p>



<p style="text-align: right;">Page 94</p> <p>1 MS. PARFITT: Objection.</p> <p>2 THE WITNESS: It's possible. I do clean</p> <p>3 things out.</p> <p>4 BY MS. BROWN:</p> <p>5 Q. Okay. Was there anybody else on the call</p> <p>6 with Mr. Cunningham regarding his questions about</p> <p>7 talc testing?</p> <p>8 A. There was one other person. I believe it</p> <p>9 was from his committee, his office. I don't recall</p> <p>10 their name.</p> <p>11 Q. Okay. Did you speak to the lawyers prior</p> <p>12 to talking to Mr. Cunningham about talc testing?</p> <p>13 A. I don't believe I did.</p> <p>14 Q. And you referenced that you referred</p> <p>15 Mr. Cunningham to Dr. Longo; is that right?</p> <p>16 A. I think that's the name I used, but I</p> <p>17 don't quite -- I don't recall exactly. I didn't</p> <p>18 take notes of the meeting. It was so quick. It</p> <p>19 was -- it was too quick to really recall or to make</p> <p>20 any notes.</p> <p>21 Q. And how do you know about who Dr. Longo</p> <p>22 is and what his experience is?</p> <p>23 A. From the litigation. After I had -- I</p> <p>24 submitted a report, I was able to see some of his</p> <p>25 expert reports.</p>	<p style="text-align: right;">Page 96</p> <p>1 if other things changed, but I don't think they</p> <p>2 did. I'm trying to see where those are referenced</p> <p>3 or if I added things.</p> <p>4 Q. Yeah, we're on 5151 of the red lines.</p> <p>5 And in at least four or five spots somebody has</p> <p>6 deleted Dr. Longo's coauthor Dr. Rigler. Help us</p> <p>7 understand why that happened.</p> <p>8 A. I don't know, 'cause they're not</p> <p>9 additional -- they would have to be part of my end</p> <p>10 note. And whether the end note -- whether the end</p> <p>11 note was using a different method of literature</p> <p>12 reference, I don't know. It's not -- it's not been</p> <p>13 added as additional materials, but --</p> <p>14 (Interruption by the reporter.)</p> <p>15 THE WITNESS: Okay. Sorry, it</p> <p>16 hasn't -- my knowledge it hasn't -- that these were</p> <p>17 from -- these were generated by my end note</p> <p>18 program, which is a referencing program. And so I</p> <p>19 don't know why a name would just disappear unless I</p> <p>20 somehow pressed a different button for the style of</p> <p>21 the end note. That's all I can think of. All the</p> <p>22 references look like they're not changed in the</p> <p>23 same way.</p> <p>24 BY MS. BROWN:</p> <p>25 Q. Okay. You did not intentionally delete</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. And I noticed, Dr. McTiernan, that some</p> <p>2 of the Longo reports appear on your -- as cited in</p> <p>3 your expert report; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. And one thing I wanted to ask you about</p> <p>6 is in the red line of your expert report at</p> <p>7 page 150 and 151.</p> <p>8 A. So which -- which -- are we in the</p> <p>9 deposition binder or the plaintiff's binder?</p> <p>10 Q. So we should be in the deposition binder.</p> <p>11 We should be at tab two, which is the red line of</p> <p>12 your report. And I'll put it up on the screen to</p> <p>13 just ask the question.</p> <p>14 MS. PARFITT: And Alli, again, I'm sorry,</p> <p>15 could you just give her the page number for that?</p> <p>16 MS. BROWN: So sure thing. So it's 150.</p> <p>17 My questions are 150 and 151.</p> <p>18 MS. PARFITT: Thank you.</p> <p>19 BY MS. BROWN:</p> <p>20 Q. One of the changes, Dr. McTiernan, that</p> <p>21 was made in this red line is that these Longo</p> <p>22 reports used to -- used to include a coauthor</p> <p>23 Rigler. And your red line deletes Rigler in a</p> <p>24 number of entries. Did you do that?</p> <p>25 A. I would have no reason to. I'm wondering</p>	<p style="text-align: right;">Page 97</p> <p>1 Dr. Rigler from all of those entries; is that fair?</p> <p>2 A. That's correct.</p> <p>3 Q. Do you know who Dr. Rigler is?</p> <p>4 A. No, I don't.</p> <p>5 Q. Have you ever read those reports that you</p> <p>6 cite here from Dr. Longo and Dr. Rigler?</p> <p>7 MS. PARFITT: Again, I would object,</p> <p>8 Alli. Many of those reports were available at the</p> <p>9 time of her deposition, and there was inquiry, or</p> <p>10 at least the opportunity for inquiry.</p> <p>11 MS. BROWN: Yeah, I appreciate that. And</p> <p>12 Michelle, it's just really one question to help</p> <p>13 understand why Rigler's all of a sudden deleted.</p> <p>14 BY MS. BROWN:</p> <p>15 Q. Is there something that you learned in</p> <p>16 reading those reports, Dr. McTiernan, that caused</p> <p>17 you to delete Dr. Rigler in this version of your</p> <p>18 report?</p> <p>19 MS. PARFITT: And I'll just object to the</p> <p>20 extent that I think Dr. McTiernan has tried very</p> <p>21 hard to say that she doesn't believe she</p> <p>22 intentionally deleted Dr. Rigler. It may be</p> <p>23 something in her end notes.</p> <p>24 And again, Alli, just trying to be</p> <p>25 fair -- and I know you are as well. I think that</p>



<p style="text-align: right;">Page 98</p> <p>1 we're just trying to understand what happened here,  2 and Dr. McTiernan is trying to understand there why  3 it's gone.  4 MS. BROWN: We're all trying to  5 understand it.  6 BY MS. BROWN:  7 Q. And I'm really not trying to suggest  8 anything untoward, Dr. McTiernan. I'm just trying  9 to understand why this guy is missing here. So  10 just fair to say not something you did or have  11 knowledge of why it happened?  12 A. That's correct. I don't understand why  13 it's changed.  14 Q. Let's -- other than this conversation  15 we've been discussing, Exhibit 8, which is your  16 correspondence with Mr. Cunningham in October of  17 2019, other than the conversation you just  18 described to me, have you had any additional  19 correspondence with any congressional staffer or  20 congressional representative regarding talc?  21 A. No.  22 Q. Since your last deposition,  23 Dr. McTiernan -- let me just check one thing.  24 Before we do that, Dr. McTiernan, I have one other  25 question for you on the invoices, and we can move</p>	<p style="text-align: right;">Page 100</p> <p>1 hearing me, just let me know, okay?  2 A. Yes.  3 Q. Okay. Since the time of your last  4 deposition, do you understand that the parties are  5 conducting discovery in a small number of potential  6 trial cases in the MDL?  7 A. Yes.  8 Q. Do you have any info about the -- any  9 information about the individual plaintiffs in  10 those cases?  11 MS. PARFITT: Counsel would represent  12 that Dr. McTiernan is a general causation expert  13 and she will not be giving any case-specific  14 opinions.  15 MS. BROWN: I appreciate that. Thanks,  16 Ms. Parfitt.  17 BY MS. BROWN:  18 Q. So let me just ask you a few quick  19 questions, and we will move on.  20 Are you aware of the names of any of  21 the plaintiffs in the smaller potential trial pool  22 cases, Dr. McTiernan?  23 MS. PARFITT: Objection.  24 THE WITNESS: No. Sorry.  25 BY MS. BROWN:</p>
<p style="text-align: right;">Page 99</p> <p>1 past that.  2 We were talking about Exhibit 7. And  3 I noticed one of your invoices from January 2020  4 references something called Communicate  5 Perspective. And I don't want to know about  6 discussions you had with lawyers, but putting that  7 aside, can you tell me what you were referring to  8 here, "communicate perspective" in January of 2020?  9 MS. PARFITT: Objection to the extent it  10 involves any discussions with counsel.  11 THE WITNESS: I -- I can't recall.  12 January 2020. I would need to look back and see  13 what I was doing at that point.  14 BY MS. BROWN:  15 Q. Okay. And in terms of where you would go  16 to figure that out, where was that, ma'am?  17 A. I think I'd go look through e-mails or  18 look at my calendar and see if I had any conference  19 calls. I'm not sure.  20 Q. Since your Daubert deposition,  21 Dr. McTiernan, the court and the parties have  22 been --  23 A. I'm sorry. You said two words. After  24 the deposition?  25 Q. I'll rephrase. If you're having trouble</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. Have you reviewed any medical records  2 from any of the plaintiffs in the pool of potential  3 trial cases?  4 MS. PARFITT: Same objection.  5 THE WITNESS: No.  6 BY MS. BROWN:  7 Q. Have you requested the opportunity,  8 Dr. McTiernan, to look at the medical records of  9 any of the plaintiffs in this smaller set of  10 potential trial cases?  11 MS. PARFITT: Objection, argumentative.  12 I think Dr. McTiernan or I at least have made  13 clear she's not going to be a case-specific expert.  14 She's a general causation expert.  15 MS. BROWN: Michelle, let's be fair. You  16 made your record.  17 BY MS. BROWN:  18 Q. Dr. McTiernan --  19 MS. PARFITT: I don't want -- I don't  20 think we want to be abusive, though, with regard to  21 these questions. She's made it clear she's not  22 reviewing case-specific expert. Alli, you have  23 limited time to ask a limited number of questions,  24 so I'm trying to move it along so that we ask that  25 which is relevant.</p>

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1 MS. BROWN: Respectfully, Michelle -- and  
2 I do respect you very much -- you are really going  
3 overboard with the speaking objections today. And  
4 I would request that you conform your objections to  
5 the federal rules, and I'm certainly conforming my  
6 questions to things that have happened since the  
7 last deposition, and you know that.  
8 MS. PARFITT: Right.  
9 MS. BROWN: And I'll --  
10 MS. PARFITT: I'm sorry --  
11 MS. BROWN: -- representation that she is  
12 giving a certain type of opinion. I am absolutely  
13 entitled to ask more questions, which is all it is,  
14 about what she has or has not done and has asked to  
15 do. So let's finish these four questions and  
16 let's --  
17 MS. PARFITT: Sure. But let me just  
18 say --  
19 MS. BROWN: -- been doing that all day.  
20 MS. PARFITT: Sure. Ms. Brown, the only  
21 thing I would say is that I don't think I've been  
22 overly exhausting with my objections. It's only  
23 been when you go into areas like this where I think  
24 we can get clear what her testimony is or isn't.  
25 But Dr. McTiernan, you can answer that last

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1 question so hopefully we can move on to relevant  
2 material.  
3 BY MS. BROWN:  
4 Q. And Dr. McTiernan, have you requested the  
5 opportunity to look at the medical records of any  
6 of the plaintiffs in the pool of potential trial  
7 cases?  
8 A. No.  
9 Q. Are you aware of the types of cancers  
10 that any of the plaintiffs in the pool of potential  
11 trial cases have?  
12 MS. PARFITT: Objection.  
13 THE WITNESS: No.  
14 MS. PARFITT: And Alli, before you move  
15 on to another subject, maybe to clear up any  
16 mistake with regard to the Cunningham letter that  
17 you asked about and the redacted portion. I did go  
18 back and check the original, and it was a  
19 communication from Dr. McTiernan to us, and it just  
20 had her name and her university status. So I just  
21 wanted to clear that up. I didn't want, frankly,  
22 the lack of that to suggest that there was  
23 something more.  
24 MS. BROWN: I appreciate that. Thank  
25 you.

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1 MS. PARFITT: You are welcome.  
2 MS. BROWN: And Dr. McTiernan, I'm going  
3 to move to another area. And I see we're just  
4 about at another hour, so if everyone thinks this  
5 makes sense, why don't we take a short break  
6 and we'll meet again.  
7 MS. PARFITT: Alli, that would be great.  
8 MS. BROWN: Okay.  
9 (Break taken.)  
10 BY MS. BROWN:  
11 Q. So back on the record. Welcome back,  
12 Dr. McTiernan. I have a couple of questions for  
13 you again about Exhibit C to your amended report,  
14 and I'll share my screen to the extent it helps.  
15 And again, that is -- I think we've  
16 marked it as Exhibit 3. And I want to ask you some  
17 questions about some of the documents that appear  
18 right at the very top of page 1 of the Exhibit C.  
19 For example, Doctor, the very first document listed  
20 on Exhibit C is an October 11, 2019 AMA Analytical  
21 Services, Inc. certificate of analysis. Do you see  
22 that?  
23 A. Yes.  
24 Q. Do you know what that is?  
25 A. I don't. I'd have to look at it again.

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1 Q. Is this a document that you had added to  
2 your report?  
3 A. I think it was added to my report, but I  
4 didn't put it together.  
5 Q. Do you know what AMA Analytical Services,  
6 Inc. is?  
7 A. I would have to look at the document to  
8 determine what -- to jog my memory.  
9 Q. Okay. Similarly, October 27, 2019, it's  
10 a Bureau Veritas letter re Johnson's baby powder  
11 finished goods, lot number 22318RB. Do you see  
12 that?  
13 A. Yes.  
14 Q. And do you know who Bureau Veritas is?  
15 A. Again, I'd have to look at the document.  
16 Q. This is not a document -- this is a  
17 document that was given to you by the lawyers?  
18 A. It would have been, yes.  
19 Q. And same with the AMA Analytical  
20 Services, that's a document from the lawyers?  
21 A. Yes.  
22 Q. Okay. What about these RJ Lee letters  
23 and reports that are listed here on October 28,  
24 2019? Do you know what they are?  
25 A. I would need to look at them.

<p>Page 106</p> <p>1 Q. Okay. Have you reviewed any -- do you  2 know who RJ Lee is?  3 A. No, I don't.  4 Q. Okay. Have you reviewed any testing of  5 talc for asbestos that was conducted in the fall of  6 2019?  7 MS. PARFITT: Objection.  8 THE WITNESS: I don't recall. I looked  9 at some documents about the testing of talc  10 products, but I don't remember the exact date of  11 those documents.  12 BY MS. BROWN:  13 Q. Okay. Well, I'm trying to understand why  14 these things are on -- do you have an opinion about  15 any of the testing that was done on Johnson's baby  16 powder in the fall of 2019?  17 A. Again, I'd have --  18 MS. PARFITT: Dr. McTiernan, let me just  19 register my objection to the extent that this  20 inquiry was made prior to this deposition.  21 BY MS. BROWN:  22 Q. Go ahead, Dr. McTiernan.  23 A. Okay. So the question, again, was?  24 Q. Well, the question is do you have -- do  25 you intend to offer an opinion in the MDL about any</p>	<p>Page 108</p> <p>1 with a bunch of testing from the fall of 2019.  2 BY MS. BROWN:  3 Q. And Dr. McTiernan, as I understand it,  4 these documents all came to you from the lawyers;  5 right?  6 A. I have not reviewed these in depth. I  7 would need to do that before I could decide if  8 that's going to be part of an opinion.  9 Q. Okay. Well, let's try to understand  10 that. Because I only get one shot to find out what  11 your opinion is going to be, and this is it. And  12 so it sounds like, sitting here today, fair to say  13 you don't have an opinion about any of the testing  14 that was done on Johnson's baby powder in the fall  15 of 2019?  16 MS. PARFITT: Objection, broad.  17 Misstates testimony.  18 THE WITNESS: I think that what I put  19 into my amended report did not directly reference  20 testing. What I put into my report was new  21 information about epidemiology results and the new  22 Canada screening trial -- screening document.  23 BY MS. BROWN:  24 Q. Yep. And that's why I have these  25 questions, because in your new Exhibit C, there's a</p>
<p>Page 107</p> <p>1 of the testing that was done on Johnson's baby  2 powder in the fall of 2019?  3 MS. PARFITT: Again, I will object to the  4 extent, Alli, as you know, we have some testing  5 reports that Dr. McTiernan relied on by Longo and  6 Rigler at the time of her first deposition, and  7 then there were some additional ones.  8 BY MS. BROWN:  9 Q. Okay, let's be very clear, and let's  10 focus on the question. We have a supplemental  11 reliance list here from you, Doctor, and it  12 includes, as the very first ten or so documents, in  13 part testing that was done on Johnson's baby powder  14 in the fall of 2019. And I want to know if you  15 intend to offer an opinion about that testing.  16 MS. PARFITT: If you're referring --  17 again, be very specific, Alli -- you're referring  18 to just that which is in this -- it's a fair  19 question as materials considered, the ones she just  20 talked about, fair?  21 MS. BROWN: Right. That's the question.  22 MS. PARFITT: All right. Just want to  23 make sure it's clear.  24 MS. BROWN: Okay. It's very clear. I've  25 asked it three times. We got a supplemental list</p>	<p>Page 109</p> <p>1 bunch of testing reports, and it sounds like you  2 haven't seen those; is that fair?  3 A. If I've looked at them, it's not been  4 recently enough for me to recall what they are.  5 Q. Okay. Well, let's just look at one of  6 them so we can make sure we're on the same page.  7 Let's mark as Exhibit 9 one of these RJ Lee letters  8 and reports from October 28, 2019. And I think  9 this would have come to you in loose copy, but  10 for -- I'm not going to ask you in-depth questions.  11 I just want to know if this is something you have  12 reviewed before.  13 A. Is this document in this folder?  14 BY MS. BROWN:  15 Q. It should be in a loose copy that came to  16 you in your materials. A manila folder.  17 A. There's several that just say JNT. Which  18 one should I be looking at?  19 Q. It's towards the back, I'm told.  20 A. October 28th. Yes, I have that. Okay.  21 Q. Have you ever seen this document before?  22 A. It doesn't look familiar. But I could  23 have reviewed it in the past. We're talking quite  24 a few months ago.  25 Q. So here's what I'm struggling with. And</p>

<p style="text-align: right;">Page 110</p> <p>1 maybe it's some wrong stuff got added to your list,                  2 but we got a list of materials considered by you                  3 that has this document on it. So you think that                  4 might be in error?                  5 MS. PARFITT: Objection to whether or not                  6 it's in error. Alli, again, I'll take                  7 responsibility for this. We provided these                  8 materials to Dr. McTiernan --                  9 MS. BROWN: Michelle, we can't hear you.                  10 MS. PARFITT: I'm sorry. This better?                  11 Alli, can you hear a little bit better? Let me get                  12 a little bit closer.                  13 I'm trying to clear it up, and I'm                  14 not trying to make a speaking objection. We --                  15 MS. BROWN: It sounds like a speaking                  16 objection.                  17 MS. PARFITT: No, no, I think it'll give                  18 some clarity, and hopefully will do just that. If                  19 you want me to stop, I will go ahead and stop --                  20 MS. BROWN: I do, Michelle. I do because                  21 you've been doing it a lot, and we just have to get                  22 through these four hours. The question is to the                  23 doctor, to be fair, and if you have --                  24 MS. PARFITT: It is.                  25 MS. BROWN: -- your objection is to form.</p>	<p style="text-align: right;">Page 112</p> <p>1 me, then I would have looked at them. But since                  2 this is not my area of expertise, I wouldn't have                  3 looked beyond the first page. I don't have the                  4 expertise to interpret these -- these graphs and                  5 all of this data.                  6 BY MS. BROWN:                  7 Q. Okay.                  8 A. So it would have just been to have some                  9 knowledge that this testing company tested samples                  10 for J and J. I did not reference these for                  11 my -- in the changes that I made to my expert                  12 report. The changes I made were in reference to                  13 adding in the new screening document from Health                  14 Canada and adding in a new pooled epidemiologic                  15 study.                  16 BY MS. BROWN:                  17 Q. And that sounds fair, Dr. McTiernan.                  18 What I'm hearing you say is that you don't intend                  19 to offer any opinions about testing of Johnson's                  20 baby powder for asbestos; is that fair?                  21 MS. PARFITT: Objection. That is not her                  22 testimony. You know darn well --                  23 MS. BROWN: You have to stop. Literally,                  24 Michelle, it's too much.                  25 MS. PARFITT: Alli, I don't -- don't try</p>
<p style="text-align: right;">Page 111</p> <p>1 MS. PARFITT: It is.                  2 MS. BROWN: So that should put us back to                  3 the doctor.                  4 MS. PARFITT: Sure. Go ahead. If you                  5 want an informed answer, I'm about to give you                  6 some --                  7 MS. BROWN: I don't want it from you                  8 because you're not under oath.                  9 MS. PARFITT: I'm not. But if you want                  10 to know -- you asked whether or not Dr. McTiernan                  11 has said to you that a lot of documents were sent                  12 by counsel. You already asked that question.                  13 MS. BROWN: Okay. So let's get back to                  14 the question to the doctor, which is that this                  15 document that we're looking at is Exhibit 9 is a                  16 letter from the RJ Lee group dated October 28,                  17 2019.                  18 BY MS. BROWN:                  19 Q. This document appears on a list of                  20 materials considered by you, Dr. McTiernan. And my                  21 question is just is that a mistake or is this                  22 legitimately a document you have considered in                  23 forming your opinions?                  24 MS. PARFITT: Objection. You can answer.                  25 THE WITNESS: So if these were sent to</p>	<p style="text-align: right;">Page 113</p> <p>1 mischaracterizing what she said.                  2 MS. BROWN: Then your objection is form,                  3 mischaracterizes. You have to stop speaking. It's                  4 too much. Please.                  5 MS. PARFITT: Alli, I'll do it as long as                  6 you're trying to force feed Dr. McTiernan                  7 information that's --                  8 MS. BROWN: Listen. Listen. Here's                  9 where we are, Michelle. You gave her stuff. You                  10 served a list. And I want to get to the bottom of                  11 whether she has an opinion on it.                  12 MS. PARFITT: Then say --                  13 MS. BROWN: No more talking. No more.                  14 MS. PARFITT: Then say 2019. Don't say                  15 testing. Say testing in 2019 as referenced in this                  16 document and I'm not going to say anything. That's                  17 fair.                  18 MS. BROWN: But you're still talking.                  19 Please stop.                  20 MS. PARFITT: You're still misleading.                  21 MS. BROWN: Then your objection is to                  22 form.                  23 BY MS. BROWN:                  24 Q. Now, Dr. McTiernan --                  25 MS. PARFITT: Objection, misleading.</p>



<p style="text-align: right;">Page 114</p> <p>1 BY MS. BROWN:</p> <p>2 Q. -- you do intend to offer an opinion at</p> <p>3 trial regarding Exhibit 9 which is the RJ Lee</p> <p>4 report from October 28, 2019; correct?</p> <p>5 A. I don't intend to offer an opinion on</p> <p>6 this document's scientific content.</p> <p>7 Q. Okay. And can you confirm that</p> <p>8 this -- that you have ever seen this document</p> <p>9 before sitting here today?</p> <p>10 MS. PARFITT: Objection, asked and</p> <p>11 answered.</p> <p>12 THE WITNESS: If it was sent to me, then</p> <p>13 I would have just looked at it in general. I would</p> <p>14 not have looked in detail and the scientific</p> <p>15 content.</p> <p>16 BY MS. BROWN:</p> <p>17 Q. Do you know sitting here today if this</p> <p>18 document was sent to you in hard copy or</p> <p>19 electronically?</p> <p>20 A. It would have been sent electronically.</p> <p>21 Q. Okay. Are documents sent to you via a</p> <p>22 Dropbox or some kind of shared file, or are they</p> <p>23 sent by e-mail?</p> <p>24 A. Could be either.</p> <p>25 Q. Do you keep the correspondence</p>	<p style="text-align: right;">Page 116</p> <p>1 documentation?</p> <p>2 MS. PARFITT: Objection, form, broad.</p> <p>3 THE WITNESS: I could review them. The</p> <p>4 content of scientific data of that type is not in</p> <p>5 my area of expertise.</p> <p>6 BY MS. BROWN:</p> <p>7 Q. Another document I want to ask you about</p> <p>8 on this Exhibit C can be found on page 11,</p> <p>9 Dr. McTiernan. And towards the very bottom of the</p> <p>10 page you've listed here on Exhibit C OSHA</p> <p>11 Section 1910.001 asbestos, OSHA fed reg excerpts,</p> <p>12 OSHA's position on risks associated with asbestos</p> <p>13 exposure at the current PEL. Do you see those</p> <p>14 three entries?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. What's OSHA?</p> <p>17 A. Occupational Safety and Health</p> <p>18 Administration. I believe that's what it stands</p> <p>19 for. It's a US government organization.</p> <p>20 Q. Okay. Did you add OSHA Section 1910.001</p> <p>21 to your expert report?</p> <p>22 A. Are you saying did I add it since the</p> <p>23 last expert report?</p> <p>24 Q. Yep.</p> <p>25 A. I'm not sure. I know that there's some</p>
<p style="text-align: right;">Page 115</p> <p>1 transmitting to you documents that you review in</p> <p>2 connection with your expert witness work?</p> <p>3 A. I keep them -- I keep them all in my</p> <p>4 files. On occasions I keep the e-mails they're</p> <p>5 attached to, but usually I file them on my</p> <p>6 computer.</p> <p>7 Q. Okay. So I'll request production of the</p> <p>8 correspondence transmitting Exhibit 9 to you as</p> <p>9 well as all of the documents listed at the</p> <p>10 beginning of your materials considered that we've</p> <p>11 been discussing, starting with October 11, 2019 AMA</p> <p>12 Analytical Services through October 28, 2019 RJ Lee</p> <p>13 letter and report.</p> <p>14 MS. PARFITT: And we'll take it under</p> <p>15 advisement. Thank you.</p> <p>16 BY MS. BROWN:</p> <p>17 Q. Since the time of your last deposition,</p> <p>18 Dr. McTiernan, have you asked to see any testing</p> <p>19 results of Johnson's baby powder for asbestos or</p> <p>20 heavy metals or other impurities?</p> <p>21 MS. PARFITT: Objection.</p> <p>22 THE WITNESS: No.</p> <p>23 BY MS. BROWN:</p> <p>24 Q. Do you feel as an epidemiologist you</p> <p>25 would be qualified to review that type of</p>	<p style="text-align: right;">Page 117</p> <p>1 issues that -- with OSHA that I considered, but I</p> <p>2 don't remember the exact name and number of the</p> <p>3 document.</p> <p>4 Q. Have you ever seen this regulation</p> <p>5 before?</p> <p>6 A. I didn't know it was a regulation,</p> <p>7 so -- so that -- I don't -- I don't know what it</p> <p>8 refers to. I'd need to look at the actual</p> <p>9 document.</p> <p>10 Q. So this OSHA regulation appears on a list</p> <p>11 of materials considered by you. Was it added by</p> <p>12 someone other than yourself?</p> <p>13 MS. PARFITT: Objection.</p> <p>14 THE WITNESS: I don't --</p> <p>15 MS. PARFITT: You can answer.</p> <p>16 THE WITNESS: Yeah, I'm not sure. I know</p> <p>17 that I, in my overall opinion, have considered what</p> <p>18 OSHA considers acceptable or not acceptable for</p> <p>19 asbestos because it is a known carcinogen. And so</p> <p>20 what I don't know is what, if any, I've referenced</p> <p>21 in my report.</p> <p>22 BY MS. BROWN:</p> <p>23 Q. Okay. So we'll take a look at it in a</p> <p>24 second. The next document is OSHA fed reg</p> <p>25 excerpts. What's that?</p>

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1 A. The same thing: I'd need to look at it  
2 in order to be able to respond.  
3 Q. But where would you go? How do we look  
4 at that and how -- who excerpted it?  
5 A. I don't know.  
6 Q. How are we going to figure that out?  
7 'Cause I don't know either.  
8 MS. PARFITT: Is that a question for  
9 Dr. McTiernan?  
10 BY MS. BROWN:  
11 Q. Yes. So Dr. McTiernan, here's the  
12 problem I have. I got a list of materials  
13 considered by you that has a document called OSHA  
14 fed reg excerpts. How will we find out what that  
15 document is and who excerpted it?  
16 MS. PARFITT: Objection to the question.  
17 THE WITNESS: I don't know. If this  
18 isn't in the materials considered, then is it -- I  
19 don't know if this is one of the materials that are  
20 available in these two binders.  
21 BY MS. BROWN:  
22 Q. So the -- it's not a document that you  
23 gave to us in advance of your deposition. Would  
24 you know where to go to find something called OSHA  
25 fed reg excerpts that's listed as something you

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1 considered?  
2 A. No, I would not.  
3 Q. Okay. Do you know who came up with the  
4 entry on your materials considered list called OSHA  
5 fed reg excerpts?  
6 MS. PARFITT: Objection.  
7 THE WITNESS: No, I don't.  
8 BY MS. BROWN:  
9 Q. Okay. Are you relying at all on  
10 something called OSHA fed reg excerpts in  
11 connection with your testimony in the MDL?  
12 A. I would need to see what it is.  
13 Q. Right. But as we just talked about,  
14 nobody knows what it is.  
15 MS. PARFITT: Objection.  
16 BY MS. BROWN:  
17 Q. I mean, sitting here today, it's not  
18 something you're relying on; is that fair?  
19 A. I don't know what -- what the document  
20 is. I would need to see what it is.  
21 Q. Okay. So -- so would I. How -- if  
22 someone asked you, Dr. McTiernan, I would like to  
23 see this document that you considered called OSHA  
24 fed reg excerpts, how would you go about showing  
25 them that?

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1 A. I would have to go through the documents  
2 that I have saved. Anything that was related to  
3 OSHA, I would have to look for that. I would have  
4 to look at what OSHA has said on asbestos and the  
5 acceptable amount of asbestos that can be contained  
6 in products and -- because it was a carcinogen. So  
7 I'd need to look through that and then determine  
8 which of those documents was named to this. So  
9 that's what I would have to do.  
10 Q. Okay. So to the extent you're going to  
11 rely on OSHA fed reg excerpts in connection with  
12 your opinion in the MDL, I'll request production of  
13 whatever that is.  
14 And then, finally, OSHA's position on  
15 the risks associated with asbestos exposure at the  
16 current PEL. Do you know what that document is?  
17 A. No, I don't.  
18 Q. Okay. It's not something that rings a  
19 bell to you; right?  
20 A. The title does not, that's right.  
21 Q. Okay. Do you know what the current PEL,  
22 what that means?  
23 A. I don't.  
24 Q. Do you know --  
25 A. I would need to look it up.

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1 Q. You don't know what PEL even stands for?  
2 A. I do not.  
3 Q. Okay. In terms of this regulation here,  
4 the first one we were talking about, OSHA 1910, are  
5 you aware that this includes OSHA's definition of  
6 asbestos?  
7 A. I don't know.  
8 Q. Okay.  
9 A. I would need to look at it.  
10 Q. Do you agree with how OSHA defines  
11 asbestos?  
12 MS. PARFITT: Objection. This area of  
13 testimony with regard to asbestos fibrous topics  
14 was inquired at the time of her deposition and  
15 thereafter.  
16 MS. BROWN: This is a brand-new entry to  
17 your brand-new report. I'm trying to understand --  
18 MS. PARFITT: An entry of an article that  
19 she's already told you, Alli, that she'd have to  
20 look at in order to comment.  
21 MS. BROWN: Okay. So let's mark it and  
22 let's find out why it's here. So Stef, remind me  
23 what tab OSHA -- oh. So it would be 25A in the  
24 deposition binder. And I'll just put it up. What  
25 was cited as something you considered is this



<p style="text-align: right;">Page 122</p> <p>1 Occupational Safety and Health Administration  2 regulation 1910.1001.  3 BY MS. BROWN:  4 Q. Does this look familiar? And let's mark  5 this as Exhibit 10, please, to your deposition.  6 A. It doesn't look familiar.  7 Q. Okay. One of the things that's listed as  8 something you considered says at page 65 is that  9 for purposes of regulation, the mineral must be in  10 one of the six minerals covered and must be in the  11 asbestos growth habit. Do you agree with that?  12 MS. PARFITT: Objection. Dr. McTiernan  13 has already been inquired of with regard to her  14 opinions as they relate to this litigation, and  15 she's already just told you, Alli, she doesn't  16 remember reading this document.  17 BY MS. BROWN:  18 Q. Do you agree with that statement in the  19 document you added to your reliance list in your  20 amended report?  21 MS. PARFITT: Objection. Dr. McTiernan's  22 indicated she hasn't reviewed the document and did  23 not form part of her opinions in this case which  24 were already inquired of.  25 BY MS. BROWN:</p>	<p style="text-align: right;">Page 124</p> <p>1 that was a shorter version of this, so I can't -- I  2 can't -- I can't recall. But it was in the -- it  3 was not something that I wrote about in my revised  4 report.  5 BY MS. BROWN:  6 Q. Did you, Dr. McTiernan, approve this  7 Exhibit C, the materials considered list, before it  8 was served in this litigation?  9 MS. PARFITT: Objection, argumentative.  10 THE WITNESS: Pardon? What was that?  11 BY MS. BROWN:  12 Q. Did you approve the Exhibit C to your  13 amended report before it was served in this  14 litigation?  15 MS. PARFITT: Objection, argumentative.  16 THE WITNESS: I believe I -- I am not  17 sure where the final listing was. I did talk with  18 Ms. Parfitt and her staff about the things that  19 would be added, but I don't know if I very  20 last-minute reviewed it in detail.  21 BY MS. BROWN:  22 Q. There's an entry on your Exhibit C, an  23 article by Karen Psooy called Vaginal Entrapment of  24 Bath Water, a Source of Extra-Urethral  25 Incontinence. Do you see that?</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. Do you agree with this statement in the  2 document that you listed as a material you  3 considered in your amended report, Doctor?  4 MS. PARFITT: Objection.  5 BY MS. BROWN:  6 Q. You can go ahead and answer, Doctor. Is  7 that something you agree with?  8 MS. PARFITT: Objection.  9 THE WITNESS: I don't have the expertise  10 to answer that question.  11 BY MS. BROWN:  12 Q. Would it be fair, Dr. McTiernan, to make  13 some edits to this Exhibit C materials considered?  14 MS. PARFITT: Objection.  15 THE WITNESS: I'm not sure what you mean,  16 make --  17 BY MS. BROWN:  18 Q. Did you really consider OSHA 191.1001,  19 the regulation we were just looking at, did you  20 really consider that in connection with your  21 opinions?  22 MS. PARFITT: Objection, argumentative.  23 THE WITNESS: I don't recall looking at  24 this entire -- it looks like whatever this entire  25 document, I don't know if I referenced something</p>	<p style="text-align: right;">Page 125</p> <p>1 A. Yes.  2 Q. Have you ever seen that document before?  3 A. I don't think I referenced it in the --  4 my report, but it does sound familiar.  5 Q. Okay. Is this a document that you  6 considered in connection with your opinions in this  7 case?  8 A. I'd need to look at the document.  9 Q. Okay. Let's mark it as Exhibit 11.  10 We'll have to put it up here. I don't think we  11 have a hard copy for you, Doctor, and so if you  12 need more time, let me know. This is the article.  13 It's from something called the Canadian Urological  14 Association. What's that?  15 A. I don't know. And I'd need to see  16 the -- the -- the actual whole paper if I'm asked  17 to comment on it.  18 Q. Okay. Well, it's listed as something you  19 considered. Did you consider it?  20 A. I can't recall. It sounds familiar. I  21 did not write about it in the new version of the  22 report.  23 Q. Okay. Do you intend to offer any  24 opinions at trial about a Canadian Urological  25 Association document called Vaginal Entrapment of</p>

<p style="text-align: right;">Page 126</p> <p>1 Bath Water?</p> <p>2 A. I'm not sure. I'd need to review it.</p> <p>3 Q. Okay. But I have a list that says you</p> <p>4 considered it. Is that not true?</p> <p>5 MS. PARFITT: Objection, argumentative.</p> <p>6 THE WITNESS: I can't recall if I looked</p> <p>7 at it. I need to review it again before I'd know</p> <p>8 what -- whether it's going to affect my opinion.</p> <p>9 BY MS. BROWN:</p> <p>10 Q. Okay. Sitting here today at your</p> <p>11 deposition on your new opinions, the Canadian</p> <p>12 Urological Association's paper called Vaginal</p> <p>13 Entrapment of Bath Water is not something you're</p> <p>14 familiar with; is that fair?</p> <p>15 MS. PARFITT: Objection.</p> <p>16 THE WITNESS: It sounds familiar, but I</p> <p>17 would want to re-review it before commenting on it.</p> <p>18 BY MS. BROWN:</p> <p>19 Q. Let's talk about a document,</p> <p>20 Dr. McTiernan, that you produced to us before your</p> <p>21 deposition that we will mark as Exhibit 12. And it</p> <p>22 can be found at tab two in your binder. So we're</p> <p>23 going to mark as Exhibit 12 the document found at</p> <p>24 tab two in your binder.</p> <p>25 A. Which binder?</p>	<p style="text-align: right;">Page 128</p> <p>1 MS. PARFITT: Object to the question.</p> <p>2 You may answer, Dr. McTiernan, if you can.</p> <p>3 THE WITNESS: So you're asking about the</p> <p>4 title. I didn't make up that title, so that's what</p> <p>5 I'm confused about.</p> <p>6 BY MS. BROWN:</p> <p>7 Q. Do you agree with the title of the</p> <p>8 article that you're quoting in that "facts fail to</p> <p>9 support some conclusions in JAMA article on talc</p> <p>10 use, ovarian cancer"?</p> <p>11 A. It would depend on what the facts are and</p> <p>12 what the conclusions are in the article.</p> <p>13 Q. Did you see this article before it was</p> <p>14 provided to news outlets by Beasley Allen?</p> <p>15 A. I provided my thoughts on that paper for</p> <p>16 Beasley Allen in the form of something that could</p> <p>17 be used for a press release. I don't believe I saw</p> <p>18 a final press release.</p> <p>19 Q. Okay. Do you --</p> <p>20 A. This is not a press release. This is a</p> <p>21 media publication.</p> <p>22 Q. Okay. And the news here says that it's</p> <p>23 provided by the law firm Beasley Allen; right?</p> <p>24 MS. PARFITT: Objection, misstates the</p> <p>25 document.</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. The binder of documents produced before</p> <p>2 the deposition.</p> <p>3 A. Okay.</p> <p>4 Q. All right. Exhibit 12 is a document</p> <p>5 titled Scientists: Facts Fail to Support Some</p> <p>6 Conclusions in JAMA Article on Talc Use, Ovarian</p> <p>7 Cancer. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And it says here that this is news</p> <p>10 provided by Beasley Allen. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And Beasley Allen is a law firm</p> <p>13 representing plaintiffs in the MDL; right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And you are one of the scientists</p> <p>16 quoted in this article; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So tell me if you would -- and</p> <p>19 this article is referring to the 2020 article by</p> <p>20 Dr. O'Brien and others; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And so tell me if you would what</p> <p>23 facts are referred to here in the title that fail</p> <p>24 to support some of the conclusions in the JAMA</p> <p>25 article?</p>	<p style="text-align: right;">Page 129</p> <p>1 THE WITNESS: It says news provided by.</p> <p>2 BY MS. BROWN:</p> <p>3 Q. The document states "news provided by</p> <p>4 Beasley Allen"; correct?</p> <p>5 A. That's what it states.</p> <p>6 Q. Okay. The title states Facts Failed to</p> <p>7 Support Some Conclusions in JAMA Article. Do you</p> <p>8 agree with that?</p> <p>9 A. Do I agree that that's what it says or do</p> <p>10 I agree with the concept?</p> <p>11 Q. Do you agree with the statement that</p> <p>12 facts failed to support some conclusions in the</p> <p>13 O'Brien JAMA article?</p> <p>14 MS. PARFITT: Objection, asked and</p> <p>15 answered.</p> <p>16 THE WITNESS: My answer's the same as it</p> <p>17 was before, depends on what facts we're talking</p> <p>18 about in an article and what the conclusion was.</p> <p>19 BY MS. BROWN:</p> <p>20 Q. Okay. Are you, sitting here today,</p> <p>21 Dr. McTiernan, aware of any facts that fail to</p> <p>22 support some of Dr. O'Brien and colleagues'</p> <p>23 conclusions in their JAMA article from 2020?</p> <p>24 MS. PARFITT: Objection.</p> <p>25 THE WITNESS: Yes.</p>

<p style="text-align: right;">Page 130</p> <p>1 BY MS. BROWN:</p> <p>2 Q. And what are those, Doctor?</p> <p>3 MS. PARFITT: Objection, overly broad.</p> <p>4 THE WITNESS: I would want to look at the</p> <p>5 article and go into that in detail.</p> <p>6 BY MS. BROWN:</p> <p>7 Q. Okay. I'm not sure I'm following. Let's</p> <p>8 carry along here in the document we're looking at</p> <p>9 and see if we can understand what's going on here.</p> <p>10 You are quoted in the second</p> <p>11 paragraph; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Have you seen this document in</p> <p>14 this form that we're looking at here, which has a</p> <p>15 media contact and a source, Beasley Allen. Have</p> <p>16 you seen this document before it was published?</p> <p>17 MS. PARFITT: Objection, asked and</p> <p>18 answered just 30 seconds ago.</p> <p>19 THE WITNESS: Did I see it before it was</p> <p>20 published, or --</p> <p>21 BY MS. BROWN:</p> <p>22 Q. Right.</p> <p>23 A. -- after it was published?</p> <p>24 Q. Before.</p> <p>25 A. I don't believe I saw this before. I saw</p>	<p style="text-align: right;">Page 132</p> <p>1 from talcum powder exposure seen in this paper are</p> <p>2 likely underestimates of their true size." Do you</p> <p>3 see that?</p> <p>4 A. Yes.</p> <p>5 Q. And you agree with that, and that's your</p> <p>6 opinion?</p> <p>7 A. Yes.</p> <p>8 MS. PARFITT: Objection.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MS. BROWN:</p> <p>11 Q. Okay. The article goes on to say,</p> <p>12 "Dr. McTiernan and other clinicians point out, and</p> <p>13 the JAMA authors acknowledge, that there are</p> <p>14 limitations with the cohort studies. For example,</p> <p>15 in the studies, the 'specific exposure windows</p> <p>16 could not be examined, nor could type of powder</p> <p>17 used or patency status at time of powder use."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And that's your quote; right?</p> <p>21 A. I'm not sure if it is. It's -- it's not</p> <p>22 a specific attribution. If you read the first</p> <p>23 sentence, it says, "Dr. McTiernan and other</p> <p>24 clinicians point out." So I'm not sure if that's</p> <p>25 an exact quote from me or from one of the other</p>
<p style="text-align: right;">Page 131</p> <p>1 the materials that I prepared, but after I found</p> <p>2 this on Google News.</p> <p>3 Q. Okay. And when you say the materials you</p> <p>4 prepared, what are those?</p> <p>5 A. I believe the lawyers asked me to</p> <p>6 summarize my -- some of my thoughts on the O'Brien</p> <p>7 paper.</p> <p>8 Q. And in what form did you create that</p> <p>9 summary?</p> <p>10 A. Some paragraphs. Yeah.</p> <p>11 Q. Did you type up a summary of the O'Brien</p> <p>12 paper?</p> <p>13 MS. PARFITT: Objection.</p> <p>14 THE WITNESS: I don't recall if it was a</p> <p>15 full summary. I think that it's very similar to</p> <p>16 what I ended up putting into my amended report. So</p> <p>17 my thoughts on the O'Brien paper are here in my</p> <p>18 amended expert report.</p> <p>19 BY MS. BROWN:</p> <p>20 Q. You are quoted as saying, "This article</p> <p>21 is an update of previously published cohort studies</p> <p>22 which didn't collect information on lifetime use."</p> <p>23 Correct?</p> <p>24 A. That's what it says, yes.</p> <p>25 Q. And you say, "Because of this, the risks</p>	<p style="text-align: right;">Page 133</p> <p>1 clinicians.</p> <p>2 Q. Okay.</p> <p>3 A. And it says "for example," so I'm not</p> <p>4 sure.</p> <p>5 Q. Right. It's hard to tell whoever -- we</p> <p>6 don't know who wrote this. Was it the people at</p> <p>7 Beasley Allen, do you know?</p> <p>8 MS. PARFITT: Objection.</p> <p>9 THE WITNESS: I don't know.</p> <p>10 BY MS. BROWN:</p> <p>11 Q. Do you agree with whomever is quoted here</p> <p>12 that specific exposure windows could not be</p> <p>13 examined?</p> <p>14 A. It's hard to -- it's hard to tell. When</p> <p>15 we talk about the paper I'll be able to talk about</p> <p>16 my things that I've noticed or in my expert report</p> <p>17 I talked about the type of exposure and type of</p> <p>18 dose response relationship that is or is not able</p> <p>19 to be seen from that paper.</p> <p>20 Q. Okay. Sitting here today, you can't</p> <p>21 comment one way or another whether specific</p> <p>22 exposure windows could or could not be examined; is</p> <p>23 that what you're saying?</p> <p>24 MS. PARFITT: Objection, misstates her</p> <p>25 testimony. She said she needed to see the paper.</p>

<p style="text-align: right;">Page 134</p> <p>1 BY MS. BROWN:  2 Q. Yeah, we're going to get to the paper,  3 don't worry. I just want to know, sitting here  4 today -- first of all, this might be your quote;  5 right?  6 MS. PARFITT: Objection, asked and  7 answered.  8 BY MS. BROWN:  9 Q. It might be, right, Doctor?  10 A. I don't recall.  11 Q. Right. So I'm just -- I wanted to know  12 if you still agree with it, or, if it's not your  13 quote, if you would agree with it?  14 MS. PARFITT: Objection. Objection,  15 argumentative.  16 BY MS. BROWN:  17 Q. And is your answer that you don't have  18 enough information right now just looking at this  19 paragraph?  20 MS. PARFITT: Objection, misstates her  21 testimony. She said she wants to look at the  22 article, not that she doesn't have enough  23 information.  24 BY MS. BROWN:  25 Q. Okay. Why don't we mark the article</p>	<p style="text-align: right;">Page 136</p> <p>1 the issue of whether somebody had used this  2 particular numbers of year.  3 So I think -- I think that's  4 talking about -- it's not clear what this means,  5 specific exposure windows. I'm not sure which  6 exposure windows they're talking about.  7 BY MS. BROWN:  8 Q. Okay. Do you agree that the O'Brien  9 authors were unable to determine patency status at  10 time of powder use?  11 MS. PARFITT: Objection.  12 THE WITNESS: They did look at patency  13 status for a subgroup, and they were able to  14 determine that those people -- those women who had  15 patent fallopian tubes, as far as they knew, had  16 increased risk of ovarian cancer by 13 percent, and  17 it fell in their statistical significance category.  18 BY MS. BROWN:  19 Q. But my question's a little different.  20 And we're going to talk about those findings. The  21 patency status, right, whether a woman has patent  22 or not patent tubes at the time of powder use, was  23 not information the O'Brien authors had; correct?  24 MS. PARFITT: Objection, misstates the  25 article.</p>
<p style="text-align: right;">Page 135</p> <p>1 then. Dr. McTiernan, we can mark as Exhibit 13 the  2 O'Brien paper. And I think in your deposition  3 binder you'll find that at tab 22, Doctor. Have  4 you found the article, Doctor?  5 A. Yes, it looks like it's number 22 in your  6 deposition binder.  7 Q. Right. Do you agree with whomever is  8 quoted in the document we're looking at as  9 Exhibit 12 that specific exposure windows could not  10 be examined?  11 MS. PARFITT: Objection. Asked and  12 answered.  13 THE WITNESS: I think I'd want to  14 know -- I think it's alluding to dose response and  15 on timing of exposure, so I'd want to see in here  16 where the study talks about this. I know that they  17 did not have the same dose response data for  18 everybody. They did not have the same exposure  19 information on -- in all these studies either, so,  20 you know, I'm not sure exactly what that quote is  21 referring to.  22 But my own thoughts are that this  23 study is not able to answer questions about  24 lifetime use of talcum powder product use and risk  25 of ovarian cancer, nor is it able to really address</p>	<p style="text-align: right;">Page 137</p> <p>1 THE WITNESS: I would need to look  2 through this again. It's a very specific question  3 you're getting at. But I'm not sure that they  4 really did determine for all of those studies  5 exactly when somebody was using powder versus when  6 they had some procedure of surgery that stopped the  7 fallopian tubes from being patent.  8 BY MS. BROWN:  9 Q. The next paragraph of this document that  10 we're looking at as Exhibit 2 says, "Even with  11 those limitations, the JAMA study found a  12 heightened risk among certain women who use their  13 products. The data showed that women who had used  14 talcum powder products in the genital area at  15 sometime in their lives had eight percent increased  16 risk of developing ovarian cancer."  17 Do you see that in this article in  18 which you're quoted?  19 A. Yes.  20 Q. Do you believe that that is a fair  21 statement of the O'Brien authors' findings?  22 MS. PARFITT: Objection.  23 THE WITNESS: I'm just looking -- before  24 I respond, I'm looking to see what the relative  25 risks were. Yeah, the hazard ratio is 1.08, so</p>

<p style="text-align: right;">Page 138</p> <p>1 it's an eight percent increased risk.  2 BY MS. BROWN:  3 Q. You see the confidence interval is .99 to  4 1.17; right?  5 A. Yes.  6 Q. And do you agree that a relative risk of  7 1.08 with a confidence interval of .99 to 1.17  8 should be described as an eight percent increased  9 risk?  10 A. The increase in risk refers to what a  11 relative risk says or, in this case, a hazard  12 ratio. It's measuring relative risk in a different  13 way. And that -- that is what the eight percent  14 increased risk means. The confidence interval just  15 tells us about sample size and standard deviations.  16 So it's a statistical test about the  17 effect size. The effect size is what measured the  18 eight percent increased risk. The confidence  19 interval is just a statistical test.  20 Q. Okay. And Dr. McTiernan, over the course  21 of your career you have written many articles  22 discussing findings just like this one, right, with  23 relative risks or odds ratios of 1.08; correct?  24 A. I'm not -- I can't -- I can't tell you  25 how many of them said 1.08 and how many did not.</p>	<p style="text-align: right;">Page 140</p> <p>1 that you've looked at a finding like those in  2 O'Brien and written about it; correct?  3 MS. PARFITT: Objection.  4 THE WITNESS: Epidemiologists are always  5 looking at relative risk. If the relative risk is  6 above one, then it shows that the association is  7 positive, and that's associated with that kind of  8 an increased risk.  9 BY MS. BROWN:  10 Q. And is it your testimony, Doctor, that  11 that has always been your interpretation of  12 relative risks and confidence intervals like the  13 one we're talking about?  14 MS. PARFITT: Objection. Alli, if you're  15 going to continue down this road we're going to  16 have to reach out to the judge. This has been  17 exhausted.  18 MS. BROWN: I think we should, Michelle,  19 because I've really tried to be so patient, but  20 this is just -- it's gone too far with the speaking  21 objections.  22 MS. PARFITT: Well, it has. And Alli,  23 and I don't think my speaking objections -- but I  24 really, if your -- wait, let me finish. If your  25 intention --</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. Okay. There are many times over the  2 course of your career in publications that you've  3 had to interpret a confidence interval, a relative  4 risk finding like this one, 1.08, with a confidence  5 interval that crosses one; right?  6 MS. PARFITT: Ms. Brown, I'm going to  7 object to this line of questioning. You had an  8 opportunity at the time of her deposition at the  9 Daubert hearing and at trial to make inquiry with  10 regard to her interpretation of hazard risk, hazard  11 ratios and relative risk. We're not going to spend  12 time today doing and redoing that information.  13 MS. BROWN: Please conform your  14 objections to the rules.  15 BY MS. BROWN:  16 Q. Dr. McTiernan --  17 MS. PARFITT: Objection.  18 BY MS. BROWN:  19 Q. -- this is not the first time that you  20 have interpreted findings like those in O'Brien; is  21 that fair?  22 MS. PARFITT: Objection, broad,  23 nonsensical.  24 BY MS. BROWN:  25 Q. Dr. McTiernan, this is not the first time</p>	<p style="text-align: right;">Page 141</p> <p>1 MS. BROWN: This has to be done off the  2 record because you're eating my time. And I want  3 to call the judge because --  4 MS. PARFITT: Okay. Off the record.  5 MS. BROWN: -- I've been enormously  6 patient, and I've had it, okay?  7 MS. PARFITT: Well, I've actually had it  8 as well.  9 MS. BROWN: Okay. So let's get the judge  10 and let's explain what's going on and get some  11 clarity.  12 MS. PARFITT: Absolutely. I've got the  13 number right here. So we'll go ahead and call.  14 (Break taken.)  15 MS. BROWN: Judge Schneider?  16 JUDGE SCHNEIDER: Speaking.  17 MS. PARFITT: This is Michelle Parfitt.  18 And actually, Alli Brown is -- hopefully can hear  19 our conversation. We are at the deposition of  20 Dr. McTiernan. And I'm not sure if we're catching  21 you at an inopportune time or not, but we did have  22 a question for you.  23 JUDGE SCHNEIDER: Let's do it.  24 MS. PARFITT: Thank you.  25 MS. BROWN: Hi, Judge. Nice to hear you</p>



<p style="text-align: right;">Page 142</p> <p>1 again.</p> <p>2 JUDGE SCHNEIDER: Hi.</p> <p>3 MS. PARFITT: Can you hear Alli?</p> <p>4 JUDGE SCHNEIDER: Hi. Are we on the</p> <p>5 record?</p> <p>6 MS. PARFITT: We are on the record.</p> <p>7 MS. BROWN: We are.</p> <p>8 MS. PARFITT: Thank you.</p> <p>9 JUDGE SCHNEIDER: Okay. Let's talk.</p> <p>10 MS. PARFITT: Okay. Judge --</p> <p>11 JUDGE SCHNEIDER: -- during a deposition?</p> <p>12 MS. PARFITT: We are. We are in a</p> <p>13 deposition of Dr. Anne McTiernan. And it is the</p> <p>14 supplemental deposition. As you have ordered, they</p> <p>15 have four hours to visit with regard to any new</p> <p>16 materials since the deponent's last deposition.</p> <p>17 And this particular case,</p> <p>18 Dr. McTiernan was deposed back in 2019 and her</p> <p>19 report, her first report, was November 16, 2018.</p> <p>20 And I'll let Ms. Brown speak for herself, but she</p> <p>21 believes that my speaking objections have been too</p> <p>22 plentiful for her.</p> <p>23 And we're currently in an area of</p> <p>24 examination wherein Dr. McTiernan has been</p> <p>25 exhaustively examined with regard to her</p>	<p style="text-align: right;">Page 144</p> <p>1 JUDGE SCHNEIDER: If she wants to waste</p> <p>2 her time going over old ground -- I guess I'm</p> <p>3 asking a rhetorical question -- why would you</p> <p>4 object to her wasting her time on going over old</p> <p>5 ground?</p> <p>6 But as I expect when we hear</p> <p>7 Ms. Brown -- I don't mean to take the wind out of</p> <p>8 your sails -- but I totally expect you're going to</p> <p>9 say it's not old ground. The floor to you,</p> <p>10 Ms. Brown.</p> <p>11 MS. BROWN: Thanks so much, Judge. Can</p> <p>12 you hear me okay?</p> <p>13 JUDGE SCHNEIDER: I can hear you great.</p> <p>14 MS. BROWN: Okay, great. Nice to hear</p> <p>15 you again. And thanks for helping us out here.</p> <p>16 Just to follow up on what Your Honor's saying:</p> <p>17 Absolutely I have four hours. And I don't intend</p> <p>18 to go a minute over pursuant to the Court's order.</p> <p>19 We are carefully tracking the time on the record.</p> <p>20 I am being very mindful of the</p> <p>21 Court's instruction that we are only to be</p> <p>22 exploring new opinions and things that took place</p> <p>23 after Dr. McTiernan's testimony at deposition in</p> <p>24 the MDL. I am currently in the middle of</p> <p>25 questioning about Exhibit 12, which is, in fact, a</p>
<p style="text-align: right;">Page 143</p> <p>1 interpretation of epidemiological principles such</p> <p>2 as hazard risk, risk ratio, confidence intervals,</p> <p>3 what is a positive association and what is not.</p> <p>4 That has been generally examined by J and J on</p> <p>5 numerous occasions, not only at her Daubert</p> <p>6 hearing, but at trial, at deposition, and then in</p> <p>7 her report.</p> <p>8 And we are now starting to go back</p> <p>9 into that information. Ms. Brown has every right</p> <p>10 to examine Dr. McTiernan with regard to what the</p> <p>11 relative risk is and what it is not, but not to go</p> <p>12 back into the principles of epidemiology with</p> <p>13 regard to -- which could go on for hours, quite</p> <p>14 frankly -- whether she believes that it's positive,</p> <p>15 it needs to be statistically significant to be</p> <p>16 relevant -- all of that was done exhaustively.</p> <p>17 I'm going to stop here for a minute</p> <p>18 in fairness to let Ms. Brown speak. There you go,</p> <p>19 Alli.</p> <p>20 JUDGE SCHNEIDER: Can I just ask a</p> <p>21 question and then we'll get to Ms. Brown?</p> <p>22 MS. PARFITT: Yes.</p> <p>23 JUDGE SCHNEIDER: Clearly, Ms. Brown only</p> <p>24 has four hours; right?</p> <p>25 MS. PARFITT: Correct.</p>	<p style="text-align: right;">Page 145</p> <p>1 document that was produced by plaintiff in</p> <p>2 anticipation of the deposition three days ago.</p> <p>3 It's a 2020 article, Your Honor, in</p> <p>4 which Dr. McTiernan is quoted. It's an article</p> <p>5 that purports to have news provided by Beasley</p> <p>6 Allen. And the subject matter of the article is,</p> <p>7 in fact, the subject matter of a four-page</p> <p>8 supplement to Dr. McTiernan's report. That</p> <p>9 supplement is the O'Brien JAMA article from 2020.</p> <p>10 There are four pages with numerous</p> <p>11 discussions of the O'Brien findings which are also</p> <p>12 the subject of this new document that was produced</p> <p>13 in advance of this deposition.</p> <p>14 I am questioning or attempting to</p> <p>15 question Dr. McTiernan on statements not only in</p> <p>16 the article that plaintiffs produced in advance of</p> <p>17 the deposition, but also new statements in</p> <p>18 Dr. McTiernan's amended expert report regarding the</p> <p>19 findings in this JAMA article and how they</p> <p>20 are -- how Dr. McTiernan interprets and relies on</p> <p>21 those findings in connection with her amended and</p> <p>22 supplemental report.</p> <p>23 So I believe I am very carefully</p> <p>24 abiding by the Court's order to cover only</p> <p>25 supplemental materials. These questions are</p>

<p style="text-align: right;">Page 146</p> <p>1 grounded in her amended expert report and                  2 supplemental document. And as the Court wisely                  3 points out, at the end of the day I only have four                  4 hours, and certainly will not go a moment beyond                  5 that.                  6 JUDGE SCHNEIDER: Ms. Brown, the bottom                  7 line is was I correct in predicting that you were                  8 going to say that it's not old ground but instead                  9 it's new ground?                  10 MS. BROWN: Yes, Your Honor, completely                  11 new. The subject of four new pages of her expert                  12 report.                  13 JUDGE SCHNEIDER: You know what's                  14 interesting? Just as an aside, I was just reading                  15 this morning, or yesterday morning -- you know that                  16 trial is going on in Philadelphia?                  17 MS. PARFITT: Yes.                  18 JUDGE SCHNEIDER: And I think it was J                  19 and J who said Dr. Nicholson wasn't available                  20 because of her medical condition, and they wanted                  21 to use her testimony across from another trial.                  22 Plaintiff objected because they said there's new                  23 information that we -- if she testifies by                  24 transcript or video, we wouldn't have an                  25 opportunity to cross-examine her on the trends</p>	<p style="text-align: right;">Page 148</p> <p>1 in line with what Your Honor has ordered.                  2 My simple objection was not a full                  3 inquiry, a fulsome inquiry into O'Brien, my                  4 objection was simply as why are we spending time                  5 going through epidemiological principles, basic epi                  6 101, which --                  7 JUDGE SCHNEIDER: Okay.                  8 MS. PARFITT: And I'm sorry if I didn't                  9 make that clear, but I absolutely agree with the                  10 Court and with Ms. Brown. She's entitled to                  11 examine the witness on the O'Brien and any evolving                  12 science since that deposition.                  13 So if I didn't make it clear, my                  14 objection was simply to reviewing epidemiological                  15 principles 101 with Dr. McTiernan, areas of                  16 testimony that have been examined at trial. So I                  17 apologize if I didn't make that clear.                  18 JUDGE SCHNEIDER: No, you did.                  19 Ms. Brown, I know you have to make a foundation,                  20 but do you think you could move this along a little                  21 bit and get to the meat of it?                  22 MS. BROWN: Yeah. And Your Honor, I                  23 do -- I hear counsel's objection. I am not going                  24 to re-plow all of the old grounds. But there are                  25 specific findings in this new study that are the</p>
<p style="text-align: right;">Page 147</p> <p>1 today or yesterday that the judge ruled that they                  2 wouldn't permit the old testimony because the                  3 science in this area is an evolving development.                  4 And because there's always new information coming                  5 out, it wouldn't be fair to the plaintiffs to                  6 permit the old testimony to come in.                  7 And it just sounds to me like -- I                  8 don't have the record in front of me -- but                  9 defendant, Ms. Brown, is making a good faith                  10 representation that it's not old ground, it's new                  11 ground. She only has four hours. So if I'm asked                  12 to rule on whether to limit or bar this line of                  13 questioning, my answer would be I wouldn't do that                  14 because I have to accept -- as I would plaintiffs,                  15 if the shoe was on the other foot -- I have to                  16 accept plaintiff's representation.                  17 MS. PARFITT: Your Honor --                  18 JUDGE SCHNEIDER: And I don't have the                  19 transcript in front of me.                  20 MS. PARFITT: Sure. And Your Honor, this                  21 is Michelle. And I certainly understand that. And                  22 I am not objecting. I want this to be very clear.                  23 We absolutely expected defendants and would have                  24 been surprised if they would not inquire about the                  25 O'Brien study. That is perfectly appropriate and</p>	<p style="text-align: right;">Page 149</p> <p>1 subject of her amended report that she has                  2 interpreted in a certain way that I need to                  3 understand the basis for. And I am certainly                  4 mindful of doing that in a way that does not                  5 re-plow old ground. And that is tied directly to                  6 the new opinions and the new article.                  7 MS. PARFITT: With the representation                  8 that will be tied to the new articles, that's --                  9 that's certainly appropriate, Your Honor. We                  10 didn't object to that and would have expected only                  11 that. It's just that we were hearing otherwise.                  12 So again, I just want that for the record.                  13 JUDGE SCHNEIDER: So just like if the                  14 shoe was on the other foot --                  15 MS. PARFITT: Yes.                  16 JUDGE SCHNEIDER: -- I'd -- it would be                  17 the same thing. I have to accept Ms. Brown's                  18 representation. I accept both your representations                  19 because I just know you. And it sounds like she's                  20 going to move this along. She only has four hours.                  21 But you have my phone number. I'm free all                  22 afternoon. You can give a call if there's a                  23 problem. And if it means I have to Zoom in or                  24 listen to the testimony, I'm happy to do it.                  25 MS. PARFITT: Well, we thank you. I hope</p>

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1 that's not necessary. Ms. Brown and I are trying  
 2 very hard not to interrupt your day. So thank you.  
 3 Alli, anything more for the judge?  
 4 MS. BROWN: No. I appreciate it, Judge.  
 5 Thank you.  
 6 MS. PARFITT: Thank you very much.  
 7 JUDGE SCHNEIDER: Good luck to both of  
 8 you.  
 9 MS. PARFITT: Thank you.  
 10 MS. BROWN: Thanks, Judge.  
 11 MS. PARFITT: Bye-bye.  
 12 MS. BROWN: Are we -- do you want to take  
 13 five or do you want to keep going?  
 14 MS. PARFITT: You know, Alli, I'm good,  
 15 but, more importantly, Dr. McTiernan, are you good  
 16 to keep going, Dr. McTiernan, or do you want to  
 17 take a break?  
 18 THE WITNESS: I could use a break.  
 19 MS. BROWN: Okay.  
 20 MS. PARFITT: Let's do --  
 21 MS. BROWN: As I understand it, we're  
 22 just under three hours on the record. So we could  
 23 take a break and come back and just finish up if  
 24 that works for everyone.  
 25 MS. PARFITT: That's perfect. Five,

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1 ten minutes? What would you like?  
 2 THE WITNESS: Ten.  
 3 MS. BROWN: Sure.  
 4 MS. PARFITT: Very good.  
 5 (Break taken.)  
 6 BY MS. BROWN:  
 7 Q. Back on the record. Welcome back,  
 8 Dr. McTiernan.  
 9 We left off discussing Exhibit 12,  
 10 which deals in part with some comments you and  
 11 others made regarding the O'Brien article. And we  
 12 have marked the O'Brien article itself as  
 13 Exhibit 14. And I understand, Dr. McTiernan, it  
 14 was your idea to update your report with  
 15 information regarding the O'Brien article; correct?  
 16 A. I believe it was.  
 17 Q. Okay. And one of the things that you say  
 18 in your report is that there was an eight percent  
 19 increased risk for ever use versus never use;  
 20 correct?  
 21 A. Yes.  
 22 Q. Okay. And that is -- the hazard ratio is  
 23 1.08, and the confidence interval is .99 to 1.17;  
 24 correct?  
 25 A. Yes.

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1 Q. When you say there's -- in your report  
 2 that there's an increased risk, you are  
 3 interpreting this finding as an association; right?  
 4 MS. PARFITT: Objection.  
 5 THE WITNESS: What I said -- I don't know  
 6 what I say in the report. I'll have to look there.  
 7 But I -- typically if the relative risk is above  
 8 one you say it's positive. And that number refers  
 9 to the percent increase. In this case it's eight  
 10 percent. This is similar to how Dr. O'Brien  
 11 interprets too. You see her response, her letter  
 12 response, it says that they never equated the lack  
 13 of statistical significance to evidence of no  
 14 association. So she's agreeing with -- that this  
 15 is a real association, eight percent increase.  
 16 BY MS. BROWN:  
 17 Q. And do you agree, Dr. McTiernan, that a  
 18 hazard ratio of 1.08, with a confidence interval of  
 19 .99 to 1.17, shows an association?  
 20 A. Yes.  
 21 MS. PARFITT: Objection.  
 22 THE WITNESS: Yes, it shows an eight  
 23 percent increased risk in -- a positive  
 24 association.  
 25 BY MS. BROWN:

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1 Q. Okay. And that is an opinion that you  
 2 hold now as an expert witness in the talcum powder  
 3 litigation; correct?  
 4 A. Yes.  
 5 Q. And in terms of whether or not -- strike  
 6 that.  
 7 How does the O'Brien article impact  
 8 your opinions in this case?  
 9 A. It confirms my opinion that there's an  
 10 association between use of talcum powder products  
 11 and risk of ovarian cancer. Overall, they're  
 12 rel -- their increase showed eight percent, but  
 13 also they specifically looked at their a priori  
 14 hypothesis, the prior hypothesis, that women with a  
 15 patent reproductive tract would have increased  
 16 risk. And they did find that. They confirmed  
 17 that, a 13 percent increased risk.  
 18 Q. Okay. And the patent finding as well as  
 19 the overall finding, neither of those are based on  
 20 medically confirmed cases; correct?  
 21 MS. PARFITT: Objection.  
 22 THE WITNESS: I believe -- you're talking  
 23 about medical confirmation of whether or not the  
 24 women had ovarian cancer?  
 25 BY MS. BROWN:

<p style="text-align: right;">Page 154</p> <p>1 Q. Correct.</p> <p>2 A. Nurses Health Study has a medical</p> <p>3 committee that reviews medical charts to confirm</p> <p>4 the -- whether or not a cancer has occurred. The</p> <p>5 Women's Health Initiative has a similar system. I</p> <p>6 used to be head of the outcomes committee, so I</p> <p>7 know what they did, and they have local physicians</p> <p>8 at each clinic review documents to confirm that a</p> <p>9 case occurred, and then also a central coding group</p> <p>10 that codes according to a standard system. So</p> <p>11 those are confirmed cases.</p> <p>12 Sisters, I can't recall what system</p> <p>13 they have, what they're called.</p> <p>14 BY MS. BROWN:</p> <p>15 Q. Yeah, my question was just the numbers</p> <p>16 you gave us and the numbers that are called out in</p> <p>17 the results, are, by admission of O'Brien herself,</p> <p>18 not numbers based on medically confirmed cases.</p> <p>19 Did you know that?</p> <p>20 MS. PARFITT: Objection.</p> <p>21 THE WITNESS: I would have to see what it</p> <p>22 is you're referring to.</p> <p>23 BY MS. BROWN:</p> <p>24 Q. Take a look at page 56 of O'Brien, where</p> <p>25 she tells us that when we limit the outcome to</p>	<p style="text-align: right;">Page 156</p> <p>1 papers that I looked at, I looked at the main</p> <p>2 results that were reported by the authors as well</p> <p>3 as any subgroup analyses that were particularly</p> <p>4 biologically relevant. And in this case, it's the</p> <p>5 women with patent tubes.</p> <p>6 BY MS. BROWN:</p> <p>7 Q. Did you -- do you believe that the</p> <p>8 analysis limited to medically confirmed cases is</p> <p>9 more reliable than the analysis that is not limited</p> <p>10 to medically confirmed cases?</p> <p>11 MS. PARFITT: Objection.</p> <p>12 THE WITNESS: I think it's difficult to</p> <p>13 say. I know from my work on the Women's Health</p> <p>14 Initiative when we didn't have confirmed cases it's</p> <p>15 because we didn't have the medical records. They</p> <p>16 just couldn't be obtained from the hospital.</p> <p>17 BY MS. BROWN:</p> <p>18 Q. Did you --</p> <p>19 A. I just want to add that in the cases of</p> <p>20 the Nurses Health Study, those women, being highly</p> <p>21 medically educated, had a very good grasp on what</p> <p>22 their answers were, so -- and they compared</p> <p>23 self-report in Nurses Health with their medically</p> <p>24 confirmed cases and had a very high concordance.</p> <p>25 So -- so I'm not as concerned with</p>
<p style="text-align: right;">Page 155</p> <p>1 medically confirmed cases, the hazard ratio is</p> <p>2 attenuated. Did you know that?</p> <p>3 A. I see that, but that's not clear what the</p> <p>4 numbers were. Maybe she tells us somewhere.</p> <p>5 Q. Did you consider, in forming your</p> <p>6 supplemental opinion regarding O'Brien, the</p> <p>7 analysis using just medically confirmed cases?</p> <p>8 A. Well, I used the main results that this</p> <p>9 study provided. So I believe that since they put</p> <p>10 that into the abstract, they must be confident in</p> <p>11 their eight percent increase. And it's not clear</p> <p>12 why the numbers went down a little bit. Yeah, I</p> <p>13 can't -- I can't -- I can't comment on that. The</p> <p>14 number went to 1.05. So that's a five percent</p> <p>15 increase risk.</p> <p>16 BY MS. BROWN:</p> <p>17 Q. Did you know that when you formed your</p> <p>18 opinions?</p> <p>19 A. Did I -- did I look at this? I read the</p> <p>20 whole paper, yes.</p> <p>21 Q. Sure. So why would you include in your</p> <p>22 report the eight percent number when the medically</p> <p>23 confirmed analysis would show five percent?</p> <p>24 MS. PARFITT: Objection, argumentative.</p> <p>25 THE WITNESS: Just like for all the</p>	<p style="text-align: right;">Page 157</p> <p>1 these because I know the reasons for the -- for</p> <p>2 when they didn't have confirmation, mostly because</p> <p>3 they didn't get the medical record.</p> <p>4 Q. Did you read and consider Dr. O'Brien's</p> <p>5 explanation of what they did to confirm the cases?</p> <p>6 A. Where are you referring to?</p> <p>7 Q. In the article, did you read the outcome</p> <p>8 assessment and what was done regarding the</p> <p>9 confirmation?</p> <p>10 A. Maybe you can point out what you're</p> <p>11 talking about.</p> <p>12 Q. Well, I just -- I'm wondering where</p> <p>13 you're getting this information from. Did you</p> <p>14 consider what Dr. O'Brien said about medically</p> <p>15 conform -- how they got medical confirmation?</p> <p>16 A. Oh, so she's reporting here, similar to</p> <p>17 what we found in Women's Health Initiative, that</p> <p>18 delays in confirmation process was because of</p> <p>19 getting medical records.</p> <p>20 Q. So did you consider that in reporting the</p> <p>21 non-medically confirmed numbers?</p> <p>22 MS. PARFITT: Objection, asked and</p> <p>23 answered.</p> <p>24 THE WITNESS: I reported the overall</p> <p>25 number, not -- I don't think she has data for those</p>



<p style="text-align: right;">Page 158</p> <p>1 ones that were not medically confirmed, did she?</p> <p>2 BY MS. BROWN:</p> <p>3 Q. Well, she --</p> <p>4 A. She looked at the overall and then she</p> <p>5 looked at those that were confirmed.</p> <p>6 Q. Right. So did you look at -- for</p> <p>7 example, Dr. O'Brien says this was true for</p> <p>8 analyses limited to women with patent reproductive</p> <p>9 tracts, eTable 4 in the supplement. Did you see</p> <p>10 that?</p> <p>11 A. I'm sure that I looked at it. I don't</p> <p>12 see the data right here.</p> <p>13 Q. Why would you include in your report</p> <p>14 numbers of non-medically confirmed analyses when</p> <p>15 the information regarding medically confirmed</p> <p>16 analyses is included in the paper?</p> <p>17 MS. PARFITT: Objection to form.</p> <p>18 Argumentative.</p> <p>19 THE WITNESS: I provided the result,</p> <p>20 which was the main result given in the paper.</p> <p>21 BY MS. BROWN:</p> <p>22 Q. Dr. O'Brien says that -- in her paper</p> <p>23 that "In this analysis, there was a possible</p> <p>24 positive association among women with patent</p> <p>25 reproductive tracts, although because the</p>	<p style="text-align: right;">Page 160</p> <p>1 have an a priori hypothesis, you confirm it, you</p> <p>2 report it.</p> <p>3 BY MS. BROWN:</p> <p>4 Q. Okay. Do you understand what she says</p> <p>5 is -- she gives the reason why she thinks this is</p> <p>6 just exploratory. She says, "because the</p> <p>7 association was not significantly different from</p> <p>8 that observed in women with nonpatent reproductive</p> <p>9 tracts." Do you see that?</p> <p>10 A. I see what she says. I don't know if</p> <p>11 that means statistically significant. But it's</p> <p>12 mixing statistical significance with actual</p> <p>13 association. So it's -- it's -- it's mixing two</p> <p>14 different things. But she's confirmed she, they,</p> <p>15 confirmed their a priori hypothesis, which was that</p> <p>16 there was -- they would see an association in women</p> <p>17 with patent reproductive tract tubes, and they did.</p> <p>18 Q. Did this study include information on</p> <p>19 when women with nonreproductive patent tracts may</p> <p>20 have used talcum powder?</p> <p>21 A. I don't recall that they had that</p> <p>22 information. Not all of the cohorts had length of</p> <p>23 use. And if those -- if some women -- they were</p> <p>24 asked at particular points. So Nurses Health</p> <p>25 Study -- first of all, they lost a third of the</p>
<p style="text-align: right;">Page 159</p> <p>1 association was not significantly different from</p> <p>2 that observed in women with nonpatent reproductive</p> <p>3 tracts, this finding should be considered only</p> <p>4 exploratory and hypothesis generated."</p> <p>5 Do you agree with that?</p> <p>6 A. Well, it's odd to say hypothesis</p> <p>7 generating when they were confirming their a priori</p> <p>8 hypothesis. So I don't understand why they said</p> <p>9 this. In the beginning of the paper they said they</p> <p>10 had a priori hypothesis testing within that special</p> <p>11 group. They did that. They found an association.</p> <p>12 They also determined it was statistically</p> <p>13 significant. And then now I'm not sure why they're</p> <p>14 saying it was exploratory and hypothesis</p> <p>15 generating. That doesn't make sense to me.</p> <p>16 Q. Well, do you understand they say that</p> <p>17 because there was no difference between the two</p> <p>18 groups?</p> <p>19 MS. PARFITT: Objection.</p> <p>20 BY MS. BROWN:</p> <p>21 Q. It says that right here. Do you see</p> <p>22 that?</p> <p>23 MS. PARFITT: Objection. Sorry.</p> <p>24 THE WITNESS: I'm saying they're</p> <p>25 not -- following the usual procedure would be you</p>	<p style="text-align: right;">Page 161</p> <p>1 women in those cohorts, so it's missing a lot of</p> <p>2 data.</p> <p>3 But in the two-thirds of women that</p> <p>4 they had information, they asked about whether they</p> <p>5 were using currently. So if they're using</p> <p>6 currently, two of the cohorts asked about length of</p> <p>7 use. Two of them did not. So only in two studies</p> <p>8 did they have any possibility of finding out some</p> <p>9 early use.</p> <p>10 In -- but if a woman had used it when</p> <p>11 she was younger and then stopped using it, she</p> <p>12 would have been counted as a non-user. So that's a</p> <p>13 type of misclassification error that happens with</p> <p>14 people whether they're a case or a non-case, and</p> <p>15 that underestimates the relative risk. So that</p> <p>16 would underestimate the ability to -- to</p> <p>17 see -- sorry -- it would underestimate how large</p> <p>18 that relative risk is.</p> <p>19 Q. You believe that lack of information</p> <p>20 about the timing of exposure as it relates to</p> <p>21 patency underestimates the risk?</p> <p>22 A. If it's underestimating exposure, then it</p> <p>23 would underestimate the relative risk.</p> <p>24 Q. Did you read and consider the editorial</p> <p>25 from Dr. Gossett?</p>



<p style="text-align: right;">Page 162</p> <p>1 A. Yes.</p> <p>2 Q. Let's take a look at that. First of all,</p> <p>3 do you know any of the authors of the O'Brien</p> <p>4 paper?</p> <p>5 A. Let me see. I believe I do, yes.</p> <p>6 Dr. Harris is a colleague at Fred Hutchinson.</p> <p>7 Dr. Anderson is the head of my division. And</p> <p>8 Dr. Kaunitz was a WHI gynecologist. I knew him</p> <p>9 back then when I was at WHI. Oh, Dr. Tworoger was</p> <p>10 a student with me before she went on to Nurses</p> <p>11 Health Study.</p> <p>12 Q. Have you spoken to any of them about the</p> <p>13 O'Brien paper?</p> <p>14 A. I asked Dr. Tworoger or Harris, when I</p> <p>15 saw that there was an abstract, it was an abstract</p> <p>16 presented of these data at one of the cancer</p> <p>17 prevention meetings. And when I saw that, I asked</p> <p>18 them if the paper was being -- had been written up</p> <p>19 and submitted. And they said yes, it was in</p> <p>20 process. And so that's all I knew. They didn't</p> <p>21 inform me when it was coming out. I didn't see the</p> <p>22 early results until it was published.</p> <p>23 Q. Do you -- I'm sorry if you answered this.</p> <p>24 Do you know Dr. Dana Gossett?</p> <p>25 A. No, I do not.</p>	<p style="text-align: right;">Page 164</p> <p>1 to the editor, and then a response to Dr. O'Brien,</p> <p>2 Sandler and Wentzensen.</p> <p>3 Q. Okay. And what Dr. Gossett says, she has</p> <p>4 a paragraph towards the end that starts, "Given the</p> <p>5 putative mechanism." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And she says, "Given this putative</p> <p>8 mechanism of exposure, the subgroup of women with</p> <p>9 patent reproduction tracts is of particular</p> <p>10 interest." Do you agree with that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. "However, it's not possible to</p> <p>13 equate a patent reproductive tract with exposure,</p> <p>14 and a nonpatent reproductive tract with</p> <p>15 nonexposure." Would you agree with that?</p> <p>16 A. It's a perfect example of underestimating</p> <p>17 exposure, which is going to underestimate the</p> <p>18 relative risk.</p> <p>19 Q. She goes on to say that "Women who</p> <p>20 undergo tubal ligation and use powders in the</p> <p>21 genital area cannot be assumed to have started them</p> <p>22 only after the surgery. In fact, this is highly</p> <p>23 unlikely, as women often begin use of powder in the</p> <p>24 genital area during adolescence." Do you agree?</p> <p>25 A. Let me see again. I don't know what she</p>
<p style="text-align: right;">Page 163</p> <p>1 Q. Okay. She is from the MSCI department of</p> <p>2 obstetrics and gynecology at the University of</p> <p>3 California-San Francisco. Are you familiar with</p> <p>4 that institution?</p> <p>5 A. Actually, I looked -- I think she's left</p> <p>6 there. But that's where she was. And I don't know</p> <p>7 that institution, but you said UCSF?</p> <p>8 Q. Yep.</p> <p>9 A. Yes, I know that university. Can you</p> <p>10 tell me, 'cause it's not in -- I can't find it in</p> <p>11 my documents, the Gossett, can you tell me where it</p> <p>12 is in yours?</p> <p>13 Q. Sure. Let's take a look and mark it as</p> <p>14 Exhibit 15. And in the deposition binder,</p> <p>15 tab eight.</p> <p>16 A. Okay.</p> <p>17 (Interruption by the reporter.)</p> <p>18 BY MS. BROWN:</p> <p>19 Q. Okay. So this is an editorial regarding</p> <p>20 the O'Brien paper we've been discussing; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And in fact, there were a number</p> <p>23 of letters to the editors and similar writing that</p> <p>24 went on following that; correct?</p> <p>25 A. I believe there were two or three letters</p>	<p style="text-align: right;">Page 165</p> <p>1 is referencing for when women begin use of them.</p> <p>2 It says they often -- it would be nice to know the</p> <p>3 statistics that she's referring to. I would</p> <p>4 imagine that that would vary greatly by cohort and</p> <p>5 by availability of these products and by marketing.</p> <p>6 So I can't respond to what she's saying there.</p> <p>7 Q. Have you not considered the scientific</p> <p>8 literature noting that women often begin using</p> <p>9 powder in adolescence or at a younger age?</p> <p>10 A. I haven't seen statistics on that, on</p> <p>11 exactly when they start, when they stop and -- you</p> <p>12 know, there's going to be a cohort effect. So we</p> <p>13 know that cohort in terms of population cohort, we</p> <p>14 know Women's Health Initiative had higher use than</p> <p>15 did some of these other cohorts. May have been</p> <p>16 either marketing in the area or could have just</p> <p>17 been when they were born.</p> <p>18 So what I don't know is what</p> <p>19 this -- what she's referring to, what numbers. But</p> <p>20 the whole issue is underestimation of the relative</p> <p>21 risk because of underestimation of exposure. So</p> <p>22 that's -- that's the -- that's what I'm taking away</p> <p>23 from this.</p> <p>24 Q. You do not agree with the proposition</p> <p>25 that women often begin using powder during</p>

<p style="text-align: right;">Page 166</p> <p>1 adolescence; is that fair, Dr. McTiernan?</p> <p>2 A. I just don't understand the word often.</p> <p>3 I think I would like to see what she's talking</p> <p>4 about in terms of numbers.</p> <p>5 Q. Okay. Have you reviewed IR from Kramer</p> <p>6 2016 on that point?</p> <p>7 A. I reviewed -- yeah, one study, Kramer</p> <p>8 2016. But most of the studies don't have that type</p> <p>9 of detail. And Kramer was in Boston area in older</p> <p>10 women. And so I don't -- I don't know what she's</p> <p>11 referring to.</p> <p>12 Q. So do you disagree with Dr. Kramer's</p> <p>13 conclusion that would support that statement?</p> <p>14 MS. PARFITT: Objection, misstates her</p> <p>15 testimony.</p> <p>16 THE WITNESS: I'm not sure if</p> <p>17 Dr. Kramer's statement -- I'm not sure what you're</p> <p>18 talking about.</p> <p>19 BY MS. BROWN:</p> <p>20 Q. About the time, the age, that women begin</p> <p>21 using talcum powder, do you agree or disagree with</p> <p>22 Dr. Kramer who says that early in life, including</p> <p>23 adolescence?</p> <p>24 MS. PARFITT: Objection.</p> <p>25 THE WITNESS: Does he say that every</p>	<p style="text-align: right;">Page 168</p> <p>1 something based on a statistical test. It just</p> <p>2 tells you additional information.</p> <p>3 The fact is, you can't change those</p> <p>4 relative risks. The relative risk of one group is</p> <p>5 .13 and the other is .99. That's -- that's the</p> <p>6 relevant number to look at.</p> <p>7 BY MS. BROWN:</p> <p>8 Q. Your critique of Dr. Gossett's statement</p> <p>9 is her inclusion and reliance on statistical</p> <p>10 significance; is that fair?</p> <p>11 A. I'd say it's misrepresentation of what</p> <p>12 statistical significance is telling us.</p> <p>13 Q. Dr. Gossett says, "The subgroup analysis</p> <p>14 suggesting that women with intact reproductive</p> <p>15 tracts who use powder in the perineal area</p> <p>16 developed ovarian cancer more frequently than</p> <p>17 non-users is below the effect size that</p> <p>18 epidemiologists generally consider important and</p> <p>19 should not be selectively highlighted by the</p> <p>20 statistically unsophisticated reader as evidence of</p> <p>21 a relationship." Do you agree with that?</p> <p>22 MS. PARFITT: Objection.</p> <p>23 THE WITNESS: No. No, I do not. And I</p> <p>24 don't -- is she a statistician?</p> <p>25 BY MS. BROWN:</p>
<p style="text-align: right;">Page 167</p> <p>1 woman -- you know, I just don't know what</p> <p>2 statement. I'd need to see the statement.</p> <p>3 BY MS. BROWN:</p> <p>4 Q. Dr. Gossett says, "The stratification of</p> <p>5 the groups as patent and nonpatent does not clearly</p> <p>6 group women into exposed and unexposed categories."</p> <p>7 And you would agree with that; correct?</p> <p>8 A. She's talking about underestimation of</p> <p>9 exposure. I would agree with that.</p> <p>10 Q. "The fact that there are no significant</p> <p>11 differences in the HRs, the hazard ratios in the</p> <p>12 patent and nonpatent subgroups, confirms the</p> <p>13 overall conclusion that there is no demonstrable</p> <p>14 statistically significant association between use</p> <p>15 of powder in the genital area and ovarian cancer</p> <p>16 risk." Do you agree?</p> <p>17 MS. PARFITT: Objection.</p> <p>18 THE WITNESS: I disagree. It's a</p> <p>19 misrepresentation of statistical testing. And I</p> <p>20 believe the American Statistical Association</p> <p>21 statements on what -- of not interpreting -- not</p> <p>22 misinterpreting statistical testing as -- will give</p> <p>23 us some support here, in that you just don't say</p> <p>24 that that statistical significance is something</p> <p>25 that is a bright line that you accept or reject</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. Do you agree -- well, you don't know her;</p> <p>2 right?</p> <p>3 A. I don't know. I don't know if she's a</p> <p>4 statistician. I don't know what a sophisticated --</p> <p>5 statistically unsophisticated reader is.</p> <p>6 Q. Well, do you believe that the patent</p> <p>7 subgroup analysis is below the effect size that</p> <p>8 epidemiologists generally consider important?</p> <p>9 A. I don't know what an effect size an</p> <p>10 epidemiologist would generally consider important</p> <p>11 is. To my knowledge, there is no defined level of</p> <p>12 risk that is considered important or not important</p> <p>13 in epidemiology.</p> <p>14 Q. What about the number of women included</p> <p>15 in those subgroup analyses? Do you believe that</p> <p>16 enough women were included in the patent/nonpatent</p> <p>17 subgroup analyses to provide a meaningful result?</p> <p>18 A. I would need to look. First of all, she</p> <p>19 has -- they had an a priori hypothesis, so it's not</p> <p>20 clear if they had specific numbers that they would</p> <p>21 expect of the numbers they had. So the a priori</p> <p>22 hypothesis was to look at association within women</p> <p>23 who had patent tubes, and they did, and they had</p> <p>24 1,384 women with ovarian cancer in that subgroup.</p> <p>25 So yes, they had enough numbers there.</p>

<p style="text-align: right;">Page 170</p> <p>1 Q. Dr. Gossett says, "In addition, the  2 investigators conducted multiple subgroup analyses  3 increasing the risk of a type one error." Do you  4 agree with that, Dr. McTiernan?  5 MS. PARFITT: Objection.  6 THE WITNESS: That, again, only refers to  7 a statistical test. It doesn't affect the relative  8 risk. Type one error is only statistical testing.  9 BY MS. BROWN:  10 Q. Do you agree that multiple subgroup  11 analyses increase the risk of a type one error?  12 A. Over the universe, then all of these  13 cohort studied look at multiple, multiple  14 predicting variables and multiple subgroup  15 analyses. So this is a statement that doesn't  16 really make sense in the context of epidemiology.  17 And it's clearly referring to statistical  18 significance. It's not referring to the relative  19 risk.  20 BY MS. BROWN:  21 Q. Two of the articles that you included on  22 your Exhibit C materials considered deal with an  23 article published in Nature called Retire  24 Statistical Significance. Are you familiar with  25 that?</p>	<p style="text-align: right;">Page 172</p> <p>1 Most likely a PubMed search.  2 Q. Have you ever written an article  3 regarding issues concerning retiring statistical  4 significance or abandoning statistical  5 significance?  6 MS. PARFITT: Objection.  7 THE WITNESS: I'm not a statistician.  8 I've not written that type of article.  9 BY MS. BROWN:  10 Q. Have you ever taught a class or given a  11 presentation regarding those themes that we should  12 abandon or retire statistical significance?  13 A. I'm not a statistician. I've not given  14 that type of talk.  15 Q. In writing your own articles over the  16 years which interpret epidemiology findings, have  17 you ever written that we should rely on findings  18 that are not statistically significant?  19 A. I can't recall. I can't recall what I've  20 done over the years. The way I learned about  21 interpreting relative risks and confidence  22 intervals and P-values are that you report what the  23 relative risk is. I'm sure that for several  24 journals -- and journals have requirements -- I  25 probably did put emphasis on the ERP value or</p>
<p style="text-align: right;">Page 171</p> <p>1 A. Yes.  2 MS. PARFITT: Objection.  3 BY MS. BROWN:  4 Q. And one of the documents you included on  5 Exhibit C was a petition that multiple individuals  6 signed in support of that article. Are you  7 familiar with that?  8 A. Yes.  9 Q. Okay. And I noticed, Dr. McTiernan, you  10 did not sign that petition, true?  11 MS. PARFITT: Objection.  12 THE WITNESS: I did not know about it in  13 order to sign it. So no, I did not.  14 BY MS. BROWN:  15 Q. Did you learn about the Nature articles  16 from the lawyers in the litigation?  17 A. No, I did not.  18 Q. How did you come to learn about the  19 Nature article and the petition?  20 A. I can't recall. It could have been  21 through searching, reading -- searching on some of  22 the researchers that have spent a lot of time  23 thinking about statistical testing and relative  24 risks. But I just -- I can't recall how I saw it,  25 but it would have been through my own searching.</p>	<p style="text-align: right;">Page 173</p> <p>1 confidence interval.  2 I don't now, especially since the  3 American Statistical Association has given specific  4 guidance about this. But it's in line with the way  5 I first learned many years ago how to interpret  6 relative risk.  7 Q. For many years, Dr. McTiernan, you  8 published and conducted research and reported  9 research based on whether or not results achieved  10 or did not achieve statistical significance, true?  11 MS. PARFITT: Objection.  12 THE WITNESS: I can't recall. I'd have  13 to go through and look. Many times it depended on  14 how a journal wanted things interpreted.  15 BY MS. BROWN:  16 Q. And many times in fact, Dr. McTiernan,  17 you interpreted statistical findings like the very  18 ones contained in the O'Brien paper and concluded  19 that they showed no association; isn't that right?  20 MS. PARFITT: Objection, overly broad.  21 THE WITNESS: I can't recall. I would  22 need to look through articles.  23 BY MS. BROWN:  24 Q. Are you surprised to know that,  25 Dr. McTiernan, that in the past you have</p>

<p>Page 174</p> <p>1 interpreted a 1.08 relative risk, a .99 to .1, .12                  2 confidence interval as a finding that shows no                  3 association?                  4 MS. PARFITT: Objection, argumentative.                  5 THE WITNESS: I don't recall. And I know                  6 that Dr. O'Brien did not say that there's no                  7 association for a relative risk for 1.08. She                  8 specifically said that in her response to a letter.                  9 BY MS. BROWN:                  10 Q. But my question was --                  11 A. Talking about this specific article, this                  12 specific case, I think it's very telling what                  13 Dr. O'Brien has stated.                  14 Q. I want to talk a little bit more about                  15 some more of Dr. O'Brien's more recent statements,                  16 but let's just finish up with the editorial from                  17 Dr. Gossett.                  18 The study -- she goes on to state,                  19 "The study by O'Brien, et al., represents the                  20 largest cohort to date to examine whether an                  21 association exists between powder use in the                  22 genital area and ovarian cancer risk. And the                  23 findings are overall reassuring."                  24 Do you agree with that, Dr. McTiernan?                  25 A. I disagree that it's a cohort. It's four</p>	<p>Page 176</p> <p>1 cohort would need more than 140,000 participants to                  2 be able to detect a risk. Do you still believe                  3 that that's true?                  4 MS. PARFITT: Objection, asked and                  5 answered. Previously asked in the last deposition.                  6 BY MS. BROWN:                  7 Q. Is that still your opinion, Doctor?                  8 A. I believe you're talking about a power                  9 calculation.                  10 Q. Correct.                  11 A. And that's if the power calculation makes                  12 the assumption of the certain number of cases                  13 occurring. If you don't have those number of                  14 cases -- the number of cases provides power to                  15 determine statistical significance. If you don't                  16 have cases occurring, it doesn't matter how big                  17 your cohort was. You could have a cohort with                  18 140,000 women in it. If none of them gets ovarian                  19 cancer, you have no study. So these power                  20 calculations make the assumption of a certain                  21 number of cases occurring.                  22 Q. Have you conducted any power calculations                  23 since your last deposition?                  24 A. No, I have not.                  25 Q. Okay. Do you believe that the O'Brien</p>
<p>Page 175</p> <p>1 cohort studies. That's the first part of the                  2 statement I disagree with. And I find that the                  3 findings are similar to what I would expect, a                  4 pooled study where three of them have previously                  5 published showing similar results and one study,                  6 nurses health two, which actually was in the gates,                  7 though, even that was published previously, and so                  8 it's not surprising but they did find confirmation                  9 of positive association, and particularly                  10 confirmation of women with patent fallopian tubes.                  11 Q. Do you believe that the O'Brien study was                  12 underpowered to identify a small increase in risk?                  13 MS. PARFITT: Objection.                  14 THE WITNESS: Even Dr. O'Brien believes                  15 that. And I believe it could have been as well. I                  16 wouldn't use the word small, because we don't                  17 know -- we don't have exact definitions of the word                  18 small for any particular descriptives in                  19 epidemiology.                  20 But as Dr. O'Brien said, it may be                  21 that relative risk of the size seen, that it was                  22 underpowered to see statistical significance with                  23 that.                  24 BY MS. BROWN:                  25 Q. In the past you've testified that a</p>	<p>Page 177</p> <p>1 study was sufficiently powered to pick up a                  2 relative risk of 1.2?                  3 MS. PARFITT: Objection, asked and                  4 answered.                  5 THE WITNESS: I didn't do calculations.                  6 The calculations look different for a pooled study                  7 than for a whole new cohort study would be. It's                  8 not just adding together the number of those                  9 individual cohorts. I'm not sure if Dr. O'Brien                  10 and colleagues did power calculations, but they                  11 state in their paper that it may have been                  12 underpowered.                  13 BY MS. BROWN:                  14 Q. Are there any other opinions that you                  15 have about the O'Brien study that we have not                  16 discussed or that are not contained in your amended                  17 report?                  18 MS. PARFITT: Objection, form, broad.                  19 THE WITNESS: I can't think of anything                  20 right now to add.                  21 BY MS. BROWN:                  22 Q. How do you believe the O'Brien study                  23 supports your opinion that talcum powder causes                  24 ovarian cancer?                  25 MS. PARFITT: Objection, asked and</p>

<p style="text-align: right;">Page 178</p> <p>1 answered.</p> <p>2 THE WITNESS: I should answer?</p> <p>3 BY MS. BROWN:</p> <p>4 Q. Yes, please.</p> <p>5 A. It confirms the results that were seen in</p> <p>6 previous cohort studies, and it confirms the</p> <p>7 hypothesis that women with patent tubes would</p> <p>8 have -- show increased risk with the use of talcum</p> <p>9 powder products.</p> <p>10 Q. Going back to Exhibit 12, which was that</p> <p>11 document with news provided by Beasley Allen. I</p> <p>12 have one other question for you.</p> <p>13 Do you recall -- and I thought it was</p> <p>14 in this document, but maybe it's in another one. I</p> <p>15 know where it is. One of the things that this</p> <p>16 Exhibit 12 does is it cites a Reuters article where</p> <p>17 Dr. O'Brien was quoted. Do you see that here?</p> <p>18 It says, "This was the largest study</p> <p>19 ever done, but because ovarian cancer is such a</p> <p>20 rare disease, it was still not big enough to detect</p> <p>21 a very small change in risk." And it cites a</p> <p>22 Reuters article. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Did you look at that actual</p> <p>25 Reuters article in which Dr. O'Brien was quoted?</p>	<p style="text-align: right;">Page 180</p> <p>1 clearly link perineal talc exposure to ovarian</p> <p>2 cancer?</p> <p>3 MS. PARFITT: Objection.</p> <p>4 THE WITNESS: It's a positive</p> <p>5 association. It confirms what was shown before in</p> <p>6 those individual studies and in the studies</p> <p>7 overall.</p> <p>8 BY MS. BROWN:</p> <p>9 Q. What I wanted to ask you about was a</p> <p>10 statement by Dr. O'Brien that is: "Given that</p> <p>11 ovarian cancer is rare," O'Brien says, "that</p> <p>12 amounts to an additional nine ovarian cancer cases</p> <p>13 for 10,000 women. That's pretty small." Do you</p> <p>14 see that?</p> <p>15 A. Yes.</p> <p>16 Q. Since your last deposition,</p> <p>17 Dr. McTiernan, have you formed an opinion about how</p> <p>18 many annual cases of ovarian cancer in your view</p> <p>19 can be attributed to perineal use of talc?</p> <p>20 MS. PARFITT: Objection.</p> <p>21 THE WITNESS: No, I have not.</p> <p>22 BY MS. BROWN:</p> <p>23 Q. Do you agree with Kramer 99 that posits</p> <p>24 that ten percent of the annual incidence rate of</p> <p>25 ovarian cancer is due to talc?</p>
<p style="text-align: right;">Page 179</p> <p>1 A. I don't know. I don't know which article</p> <p>2 it's referring to.</p> <p>3 Q. Okay. Let's mark as Exhibit 16 what is</p> <p>4 tab five in your deposition binder. And it is that</p> <p>5 Reuters article. And I want to just ask you a</p> <p>6 question about it. This is the article. It's</p> <p>7 entitled Largest Study Yet Offers No Clear Talc</p> <p>8 Link to Ovarian Cancer. Do you agree with that</p> <p>9 statement, Dr. McTiernan?</p> <p>10 MS. PARFITT: Objection.</p> <p>11 THE WITNESS: I don't really understand</p> <p>12 what it refers to. I just -- I know what the data</p> <p>13 showed.</p> <p>14 BY MS. BROWN:</p> <p>15 Q. Okay. Do you agree that the O'Brien</p> <p>16 study does not show a clear link between talc and</p> <p>17 ovarian cancer?</p> <p>18 MS. PARFITT: Objection, asked and</p> <p>19 answered.</p> <p>20 THE WITNESS: I think the O'Brien study</p> <p>21 shows that use of talcum powder products increases</p> <p>22 risk by eight percent, and for women with patent</p> <p>23 tubes, increases by 13 percent.</p> <p>24 BY MS. BROWN:</p> <p>25 Q. And in your mind does the O'Brien study</p>	<p style="text-align: right;">Page 181</p> <p>1 MS. PARFITT: Objection.</p> <p>2 THE WITNESS: I would have to look at</p> <p>3 those data to see what it is that's referring to.</p> <p>4 BY MS. BROWN:</p> <p>5 Q. Since your last deposition, have you</p> <p>6 attempted to -- in any way to calculate how the</p> <p>7 relative risk reported in the epidemiology</p> <p>8 translates to a quantifiable number of increased</p> <p>9 numbers of ovarian cancer each year?</p> <p>10 MS. PARFITT: Objection.</p> <p>11 THE WITNESS: No.</p> <p>12 BY MS. BROWN:</p> <p>13 Q. Is that an important analysis, in your</p> <p>14 view?</p> <p>15 MS. PARFITT: Objection, argumentative.</p> <p>16 THE WITNESS: It's not related to</p> <p>17 causality. And I believe they state that in the</p> <p>18 O'Brien paper as well, that it's not related to</p> <p>19 causality. I may be misremembering.</p> <p>20 BY MS. BROWN:</p> <p>21 Q. As an expert -- sorry. Go ahead.</p> <p>22 A. I would have to look through. But it's</p> <p>23 not relevant to causality.</p> <p>24 Q. As an expert witness in a mass</p> <p>25 litigation, have you attempted to figure out</p>



<p style="text-align: right;">Page 182</p> <p>1 whether the number of cases -- have you -- strike  2 that.  3 As an expert witness in a mass  4 litigation, have you attempted to compare the  5 number of cases that you believe the data shows to  6 be caused by talc each year and the number of  7 lawsuits that have been filed against Johnson &amp;  8 Johnson each year?  9 MS. PARFITT: Objection.  10 THE WITNESS: No.  11 BY MS. BROWN:  12 Q. Let's take a look, if we could, at a more  13 recent paper with O'Brien as one of the co-authors.  14 If you could go to tab 50 in the deposition binder,  15 which is a 2021 paper by Nicholas Wentzensen and  16 Katie O'Brien titled --  17 A. Which number?  18 Q. It's 50, five-zero -- no. Sorry. It's  19 the last tab of the deposition binder. Sorry.  20 MS. PARFITT: While you're doing that,  21 Alli, can we just get a time from Anita?  22 MS. BROWN: Sure. I think it's been  23 3:38, Michelle. So I have 22 minutes.  24 MS. PARFITT: Okay. Thank you.  25 BY MS. BROWN:</p>	<p style="text-align: right;">Page 184</p> <p>1 existence of a causal relationship." Do you agree  2 with that?  3 A. It depends. It may or may not. You can  4 have one carcinogen causing more than one type of  5 cancer, more than one histotype of cancer. So it's  6 not necessarily something -- it's not required for  7 causality. It's biologically interesting, I would  8 say, rather than it's needed for causality.  9 Q. O'Brien goes on to review some of the  10 findings in the epidemiology regarding different  11 histologic subtypes. Do you see that?  12 A. Yes.  13 Q. Okay. And then they go on to talk about  14 the findings of their own pooled data; correct?  15 A. You're referring to?  16 Q. On page 7 in the pooled analysis that  17 included updated data from the prospective cohorts.  18 Do you see that?  19 A. Yes.  20 Q. Okay. They say that: "O'Brien observed  21 elevated but not statistically significant hazard  22 ratios for the association with serous"; right?  23 A. Yes.  24 Q. "And estimates were also elevated for  25 endometrioids and clear cell. Neither of those</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. I'm sorry. Doctor, I think it's in your  2 documents that you produced to us, the very last  3 one.  4 MS. PARFITT: Yeah, it looks like it's  5 last in both binders.  6 MS. BROWN: There we go. Easy.  7 BY MS. BROWN:  8 Q. Okay. Are you familiar with this 2021  9 article in part by Dr. O'Brien?  10 A. Yes, I read through it.  11 Q. Okay. And I want to ask you some  12 questions about information that Dr. O'Brien and  13 her colleague write on page 6 and over onto page 7.  14 I direct your attention to the section entitled  15 Associations of Genital Powder Use and Ovarian  16 Cancer Risk By Histotype. Do you see that?  17 A. Yes.  18 Q. They write, "As discussed previously,  19 ovarian cancers encompass several different  20 histotypes which may have different cells of origin  21 and unique risk factors." Do you agree with that?  22 A. Some could be unique, some could be in  23 common.  24 Q. "The identification of subtype specific  25 associations would strengthen the argument for the</p>	<p style="text-align: right;">Page 185</p> <p>1 were -- but not statistically significant"; right?  2 A. They were probably smaller numbers which  3 determines statistical significance.  4 Q. "Ever genital powder use was not  5 associated with mucinous tumors." Do you see that?  6 A. I see that.  7 Q. Okay. Are you aware of any epidemiology  8 study that associates talcum powder with mucinous  9 tumors?  10 MS. PARFITT: Objection.  11 THE WITNESS: I would have to go through  12 the reports again. I believe one of the -- one of  13 the studies -- one of the meta-analysis do say  14 something with use of this, but I can't recall  15 where I saw it.  16 BY MS. BROWN:  17 Q. Do you believe talcum powder causes  18 mucinous tumors?  19 A. I would have to --  20 MS. PARFITT: Objection.  21 THE WITNESS: I would have to review the  22 data before I could answer that. One thing I want  23 to say is that there -- in the sentence right  24 above -- so this is referring to the -- it looks  25 like the Berg and not the tear man analysis, found</p>

<p style="text-align: right;">Page 186</p> <p>1 mucinous the odds ratio 1.09. So that is elevated.                  2 I just don't know -- oh, sorry, that was the Terry,                  3 et al, pooled analysis, the 1.09. So it's                  4 elevated. And so I couldn't say there's no                  5 association for mucinous.                  6 BY MS. BROWN:                  7 Q. Okay. What O'Brien says in this article                  8 from 2021 is that: "Overall, these results                  9 consistently demonstrate a positive association                  10 between talc and serous cancer, and possibly                  11 endometrioid tumors. The relationship between talc                  12 use and the rarer mucinous or clear cell tumor                  13 histotypes is more ambiguous."                  14 Do you agree with that, Dr. McTiernan?                  15 MS. PARFITT: Objection. You haven't                  16 read the entire statement.                  17 MS. BROWN: I'm going to get to the rest                  18 of it. I want to pause and see if you agree with                  19 that.                  20 MS. PARFITT: Objection.                  21 THE WITNESS: I don't know what she                  22 means -- what they mean by the word ambiguous. I                  23 would say there were fewer cases in all of these                  24 studies for mucinous or clear cell. So they may                  25 not have had enough numbers to have the power to</p>	<p style="text-align: right;">Page 188</p> <p>1 talcum powder use is associated with those cancers;                  2 correct?                  3 A. For the individual studies, they might                  4 not have even looked at them, which is why the pool                  5 studies is helpful. So the pool Terry analysis,                  6 for example, was able to look at some of these and                  7 did see some elevated risks.                  8 So I have not done a detailed study of                  9 the individual relative risk for these particular                  10 subtypes, but that's something that would be needed                  11 before answering that question.                  12 Q. Okay. The O'Brien authors go on to say,                  13 the rest of that sentence, they say, "The                  14 relationship between talc use and the rarer                  15 mucinous or clear cell tumors histotypes is more                  16 ambiguous, so it's not clear whether this is due to                  17 true etiologic differences or because their rarity                  18 makes them more difficult to study."                  19 Would you agree with that?                  20 A. I would say that rarity means they                  21 haven't been studied as well.                  22 Q. Have you formed the opinion, based on the                  23 existing epidemiology, that talcum powder use                  24 causes clear cell cancer?                  25 MS. PARFITT: Objection, asked and</p>
<p style="text-align: right;">Page 187</p> <p>1 see statistical significance in all of these                  2 studies.                  3 I don't have in mind exactly what                  4 the relative risks were, so we need to see that.                  5 But in some studies there was very few cases that                  6 they couldn't even test. They sometimes didn't                  7 even include them. So it's not possible for me to                  8 make -- to agree or disagree with this.                  9 BY MS. BROWN:                  10 Q. Okay. And one of the things you're                  11 recognizing, Dr. McTiernan, is that mucinous                  12 ovarian cancer is a rare histologic subtype;                  13 correct?                  14 A. From my knowledge. From my knowledge,                  15 yeah.                  16 Q. Clear cell tumors are also pretty rare;                  17 correct?                  18 MS. PARFITT: Objection.                  19 THE WITNESS: From my knowledge of                  20 looking at those papers, yes.                  21 BY MS. BROWN:                  22 Q. And it sounds like one of the issues that                  23 you're raising is that there simply may not have                  24 been enough people who have gotten those cancers in                  25 the epidemiology to properly study whether or not</p>	<p style="text-align: right;">Page 189</p> <p>1 answered. She testified to.                  2 THE WITNESS: I would need to go look at                  3 my report what I said about specific histotypes,                  4 and then I would need to update that looking at                  5 this -- these pooled studies.                  6 BY MS. BROWN:                  7 Q. So sitting here today, though, at your                  8 deposition, are you of the opinion that perineal                  9 exposure to talcum powder causes clear cell ovarian                  10 cancer?                  11 MS. PARFITT: Objection.                  12 THE WITNESS: I'm of the opinion that                  13 exposure to talcum powder products causes                  14 epithelial ovarian cancer, of which all of these                  15 subtypes are a type. I'd say that some of them                  16 have not been studied as much as others, but                  17 certainly they're all part of the epithelial                  18 ovarian cancer grouping.                  19 BY MS. BROWN:                  20 Q. Which subtypes have not been studied as                  21 much as others, in your view?                  22 A. It depends on the study. There's some                  23 studies that only looked at serous versus other.                  24 And some had enough cases that they could subtype                  25 into a variety of types. And we can see already</p>

<p>Page 190</p> <p>1 here when they've outlined for as to things are  2 accurate, that Terry was able to look at clear cell  3 on a relative risk of 1.24, and also was able to  4 look at mucinous at a relative risk of 1.09. So  5 that's a pooled study, had enough cases to be able  6 to look at those particular subtypes.  7 Q. And for the record, Doctor, what you've  8 pointed to is table two on page 6 of what we are  9 looking at as the O'Brien article that we've marked  10 as Exhibit 16. Is that right, everyone, 16?  11 O'Brien 2021 should be marked as Exhibit 16?  12 A. Okay. I was also looking at the write-up  13 on the next page, but tables -- correct.  14 Q. Okay. And so one of the things you were  15 pointing to, Doctor, is O'Brien's reported  16 estimates of the association between ever versus  17 never powder use by histotype; correct?  18 A. Yes.  19 Q. Okay. And based on the information  20 contained here, do you believe that there is enough  21 information in the epidemiology to conclude, for  22 example, that perineal exposure to talc causes  23 low-grade serous carcinoma?  24 MS. PARFITT: Objection.  25 THE WITNESS: I don't see low grade</p>	<p>Page 192</p> <p>1 here, that ovarian cancer is not one disease; that  2 there are different causes and different cells of  3 origin of different types of ovarian cancer?  4 MS. PARFITT: Objection, previously asked  5 and answered.  6 THE WITNESS: The operative word, I would  7 say, is that it may have different cells of origin.  8 We don't even know, from what I've read -- I'm not  9 an ovarian biologist or a gynecologist -- but what  10 I've read, the cells of origin are not even really  11 established in all of these types -- subtypes of  12 ovarian cancer.  13 And certainly we -- this is reason  14 to believe that some risk factors are going to go  15 across the board any type of histology of ovarian  16 cancer and -- as may some other risk factors. So  17 it's -- I'd say there may be unique risk factors,  18 but there may be several in common.  19 BY MS. BROWN:  20 Q. Health Canada determined that there was  21 not enough evidence to determine whether perineal  22 exposure to talc causes individual histological  23 subtypes of ovarian cancer. Do you agree with  24 that?  25 MS. PARFITT: Objection.</p>
<p>Page 191</p> <p>1 listed in this table. Is that what you're talking  2 about?  3 BY MS. BROWN:  4 Q. Yeah. I mean, are you familiar with any  5 epidemiology that investigates low-grade serous  6 cancer versus high-grade serous?  7 A. I would need to review whichever papers  8 you're talking about that classified them that way.  9 Q. So sitting here today are you aware of  10 the difference in the epidemiology between exposure  11 to talcum powder and high-grade serous carcinoma  12 versus exposure to talcum powder and low-grade  13 serous carcinoma?  14 MS. PARFITT: Objection.  15 THE WITNESS: I would need to look at  16 details of the studies. And overall these are all  17 part of epithelial ovarian cancer, so I would say  18 that yes, there is an association with -- between  19 talcum powder use and risk of epithelial ovarian  20 cancer.  21 These various histotypes have been  22 looked at in some studies and -- but not in others.  23 So it really depends on the particular study.  24 BY MS. BROWN:  25 Q. Do you agree with the authors, though,</p>	<p>Page 193</p> <p>1 THE WITNESS: Agree with what they said  2 or agree with the concept?  3 BY MS. BROWN:  4 Q. I think it's one and the same. But do  5 you agree with the concept that there's not enough  6 evidence to be able to say that peroneal exposure  7 to talc causes any one of these individual subtypes  8 of ovarian cancer?  9 MS. PARFITT: Objection, asked and  10 answered.  11 THE WITNESS: I think I did answer  12 earlier by stating that it's my opinion that use of  13 talcum powder products causes epithelial ovarian  14 cancer, of which there are several subtypes. That  15 any one of those subtypes is still an epithelial  16 ovarian cancer.  17 BY MS. BROWN:  18 Q. And so in forming that opinion,  19 Dr. McTiernan, you're relying on data that groups  20 all epithelial cancers together; is that right?  21 MS. PARFITT: Objection.  22 THE WITNESS: Almost all of the studies  23 I've looked at, almost all have combined everybody  24 together into an overall estimate and then  25 separately looked at whichever subtypes they were</p>

<p style="text-align: right;">Page 194</p> <p>1 able to look at.</p> <p>2 BY MS. BROWN:</p> <p>3 Q. Let me read you what Health Canada said</p> <p>4 and tell me if you agree. Tumor subtypes --</p> <p>5 A. Can you show me --</p> <p>6 MS. PARFITT: I was going to ask --</p> <p>7 BY MS. BROWN:</p> <p>8 Q. Yeah, let's try to do it quick. I'm</p> <p>9 running out of time. If you go to tab ten in the</p> <p>10 deposition binder. We'll mark Health Canada as</p> <p>11 next in order. And we'll sort that out afterwards,</p> <p>12 'cause I think I messed up the numbering.</p> <p>13 And I'll direct you to page 17 of the</p> <p>14 Health Canada screening assessment. Do you have</p> <p>15 that, Dr. McTiernan?</p> <p>16 A. Yes.</p> <p>17 Q. I'll put it up right here. And at the</p> <p>18 bottom of 17 they say, "Tumor subtypes are one of</p> <p>19 the many subgroup analyses conducted in several of</p> <p>20 the epidemiology studies in review; however, there</p> <p>21 was very little consistency in whether or how these</p> <p>22 subgroup analyses were conducted across the</p> <p>23 available studies, thereby leaving the analysis</p> <p>24 limited and likely underpowered (low sample size)."</p> <p>25 Do you agree with that?</p>	<p style="text-align: right;">Page 196</p> <p>1 THE WITNESS: In individual studies, it</p> <p>2 may have been limited. In the pool studies, they</p> <p>3 had more data available. So that the pool studies</p> <p>4 are more helpful.</p> <p>5 BY MS. BROWN:</p> <p>6 Q. For subtypes that are not examined in the</p> <p>7 pooled studies, do you agree that there is</p> <p>8 insufficient evidence on those particular</p> <p>9 histologic subtypes?</p> <p>10 MS. PARFITT: Objection, vague, broad,</p> <p>11 lacks specificity.</p> <p>12 THE WITNESS: I would have to see what</p> <p>13 those subtypes are.</p> <p>14 BY MS. BROWN:</p> <p>15 Q. Well, like low-grade serous cell off the</p> <p>16 top of your head, are you aware of any data that</p> <p>17 would support the claim that talcum powder causes</p> <p>18 low-grade serous carcinoma?</p> <p>19 MS. PARFITT: Excuse me, Alli.</p> <p>20 Objection, that question was asked and answered</p> <p>21 just a few minutes ago.</p> <p>22 THE WITNESS: I'm not --</p> <p>23 BY MS. BROWN:</p> <p>24 Q. Just off the top of your head.</p> <p>25 A. I'm not able to determine things off the</p>
<p style="text-align: right;">Page 195</p> <p>1 A. Yes. For some of the subtypes, yes.</p> <p>2 Q. "Furthermore, there's considerable</p> <p>3 uncertainty for how subgroup data should be</p> <p>4 examined, in particular for the tumor subtypes.</p> <p>5 Therefore, subgroup analyses will not be further</p> <p>6 examined in this assessment." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you agree that for some of the</p> <p>9 subtypes, any analysis that was done was limited</p> <p>10 and likely underpowered, true?</p> <p>11 MS. PARFITT: Objection.</p> <p>12 THE WITNESS: I think I said for -- I</p> <p>13 agreed for some subtypes. For serous, which is the</p> <p>14 most common subtypes, there was -- many studies</p> <p>15 have large numbers of cases. And we're able to</p> <p>16 look with some precision at that subtype. Some</p> <p>17 studies, the smaller studies, couldn't look at</p> <p>18 anything but that.</p> <p>19 BY MS. BROWN:</p> <p>20 Q. And what about for clear cell ovarian</p> <p>21 cancer, for example, do you believe that's one of</p> <p>22 the subtypes where the analyses were limited and</p> <p>23 likely underpowered?</p> <p>24 MS. PARFITT: Objection, misstates her</p> <p>25 testimony.</p>	<p style="text-align: right;">Page 197</p> <p>1 top of my head. I'd have to look back at the</p> <p>2 studies and look at subgroup data to see what</p> <p>3 you're referring to.</p> <p>4 Q. Okay. When you did -- there is -- did</p> <p>5 you add any information to your report or do any</p> <p>6 analysis since the time of your last deposition</p> <p>7 regarding whether or not perineal use of talc</p> <p>8 causes individual specific subtypes such as clear</p> <p>9 cell or low -- low-grade serous carcinoma?</p> <p>10 MS. PARFITT: Objection, form.</p> <p>11 THE WITNESS: In my report? Let's look</p> <p>12 at it.</p> <p>13 BY MS. BROWN:</p> <p>14 Q. Well, just off the top of your head,</p> <p>15 because we only have five minutes.</p> <p>16 A. I'm not good at -- comfortable with doing</p> <p>17 things off the top of my head. I like to look at</p> <p>18 what I've written and what the data look like.</p> <p>19 Q. Okay. Well, let's skip it and do one</p> <p>20 last question and then I'm going to have you let go</p> <p>21 'cause my time's up.</p> <p>22 Let's mark next in order what is an</p> <p>23 article by Gene Henley. It was included on your</p> <p>24 supplemental list. And it can be found on the very</p> <p>25 next tab, tab 11 in that deposition binder. And</p>

<p style="text-align: right;">Page 198</p> <p>1 we'll mark it as next in order.  2 It's called Geographic Co-Occurrence  3 of Mesothelioma and Ovarian Cancer.  4 And Dr. McTiernan, do you recall  5 reviewing this article and adding it to your  6 materials considered?  7 A. I can't -- I can't quite remember.  8 Q. Okay. One of the things -- let's take a  9 look at figure one at page 4. One of the things  10 this article does is compare states with high rates  11 of mesothelioma to states with high rates of  12 ovarian cancer. Do you recall that about this  13 article?  14 A. I see it here.  15 Q. Okay. And my question for you,  16 Dr. McTiernan, is have you undertaken any  17 investigation into whether or not states with high  18 rates of ovarian cancer are states with high rates  19 of talcum powder use?  20 MS. PARFITT: Objection.  21 THE WITNESS: I don't know of data on  22 talcum powder use by state. I would imagine that  23 that would be proprietary information by companies  24 selling talcum powder. I don't know of any that I  25 could have access to.</p>	<p style="text-align: right;">Page 200</p> <p>1 cancer, you would expect to see higher rates of  2 ovarian cancer in place where people are using more  3 talcum powder; right?  4 MS. PARFITT: Objection. Objection.  5 THE WITNESS: It's not clear. You would  6 really need to have individual level data so that  7 you could look at potential other factors that  8 influence both.  9 BY MS. BROWN:  10 Q. One of the things the article -- the  11 press release from Beasley Allen, Exhibit 12 that  12 we were looking at stated was that talcum powder  13 users are predominantly African American women who  14 qualify as obese. Do you agree with that statement  15 in the Exhibit 12?  16 A. I haven't looked at data looking at  17 population-based use of these products. I don't  18 know if that data exists.  19 Q. Are you aware of where the folks at  20 Beasley Allen would have gotten that information?  21 MS. PARFITT: Objection.  22 THE WITNESS: No.  23 MS. BROWN: Dr. McTiernan, I am out of  24 time. Thank you so much for your patience,  25 particularly in this remote environment. I know</p>
<p style="text-align: right;">Page 199</p> <p>1 BY MS. BROWN:  2 Q. Have you --  3 A. But if -- if it was available, it's one  4 more piece of information. But it would be an  5 ecological analysis, not a case control or cohort  6 study.  7 Q. Have you investigated whether or not  8 talcum powder use is greater, for example, in  9 warmer climates?  10 MS. PARFITT: Objection, asked and  11 answered.  12 THE WITNESS: I don't know of -- I don't  13 know if I have access -- would have access to that  14 kind of data.  15 BY MS. BROWN:  16 Q. Have you asked the lawyers who hired you  17 in this litigation if they're aware of any data  18 showing rates of talcum powder sales or use by  19 state or climate or geological region?  20 A. I would probably not do that type of  21 analysis. I mentioned it's called ecological  22 analysis, and it doesn't give us the same  23 information that a case control or cohort study  24 gives us.  25 Q. If talcum powder really caused ovarian</p>	<p style="text-align: right;">Page 201</p> <p>1 it's a little challenging with exhibits and  2 documents. It was nice to see you again, and I  3 appreciate you answering my questions.  4 THE WITNESS: Thank you.  5 MS. PARFITT: Thank you, Dr. McTiernan.  6 Thank you, Ms. Brown, as well.  7 MS. BROWN: Thanks, Ms. Parfitt. Nice to  8 see you too.  9 MS. PARFITT: Good to see you.  10 MS. BROWN: Alli Brown, we would like a  11 rough, please.  12 MS. PARFITT: And I would as well.  13 (Deposition concluded at 3:41 p.m.)  14  15  16  17  18  19  20  21  22  23  24  25</p>



## 1 CERTIFICATE

2  
3 I, ANITA KORNBURGER, Registered  
4 Professional Reporter, do hereby certify that  
5 the preceding deposition was recorded by me and  
6 reduced to writing under my personal direction.

7 I further certify that said deposition was  
8 taken remotely, with all parties appearing by  
9 videoconference, on August 19, 2021, commencing  
10 at 10:39 a.m. and concluding at 3:41 p.m.

11 I further certify that I am not a relative  
12 or employee or attorney or counsel of any of  
13 the parties, or a relative or employee of such  
14 attorney or counsel, or financially interested  
15 directly or indirectly in this action.

16 In witness whereof, I have hereunto set my  
17 hand and affixed my seal this 23rd day of August,  
18 2021.

19  
20  
21 \_\_\_\_\_  
22 ANITA KORNBURGER, RPR  
23

24 My certification expires February 28, 2023.  
25